

California State Auditor

B U R E A U O F S T A T E A U D I T S

Office of the Secretary of State:

*Clear and Appropriate Direction Is Lacking
in Its Implementation of the Federal Help
America Vote Act*



December 2004
2004-139

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CALIFORNIA STATE AUDITOR

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December 16, 2004

2004-139

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the Office of the Secretary of State's (office) administration of federal Help America Vote Act of 2002 (HAVA) funds.

This report concludes that the office's insufficient planning and poor management practices hampered its efforts to implement HAVA provisions in a timely way. Consequently, the office is at risk of failing to meet certain requirements by the January 1, 2006, HAVA implementation date. Additionally, the office's disregard for proper controls and its poor oversight of staff and consultants led to questionable uses of HAVA funds. As a result of these practices, the office runs the risk that the federal government may conduct an audit of the office's implementation of HAVA and its use of federal funds and may require repayment of some, if not all, of the HAVA funds used to pay certain employees and consultants.

Furthermore, the office avoided competitive bidding for most of its purchases paid with HAVA funds. It obtained and then inappropriately used a Department of General Services (General Services) exemption from competitive bidding for some consultant services and did not follow the State's procurement policies when purchasing other goods and services. As a result, the State has less assurance that the office obtained the best value for purchases, totaling \$3.3 million, it made with HAVA funds. Moreover, the office bypassed the Legislature's spending approval authority by inappropriately executing voter outreach consultant contracts valued at \$230,400 and then charging the associated consultant costs of \$84,600 to its fiscal year 2004-05 HAVA administration account.

Finally, the office failed to disburse federal HAVA funds to counties for the replacement of outdated voting machines within the time frames outlined in its grant application package and county agreements, causing some counties to lose interest income they could have used in replacing their voting systems.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

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SUMMARY

Audit Highlights . . .

Our review of the Office of the Secretary of State's (office) administration of federal Help America Vote Act (HAVA) funds revealed the following:

- ☑ *The office's insufficient planning and poor management practices hampered its efforts to implement HAVA provisions promptly.*
 - ☑ *The office's disregard for proper controls and its poor oversight of staff and consultants led to questionable uses of HAVA funds.*
 - ☑ *The office avoided competitive bidding for many contracts paid with HAVA funds by improperly using a Department of General Services exemption from competitive bidding and by not following the State's procurement policies.*
 - ☑ *The office bypassed the Legislature's spending approval authority when it executed consultant contracts and then charged the associated costs to its HAVA administration account.*
 - ☑ *The office failed to disburse HAVA funds to counties for the replacement of outdated voting machines within the time frames outlined in its grant application package and county agreements.*
-

RESULTS IN BRIEF

The federal Help America Vote Act of 2002 (HAVA) was passed in October 2002 with overwhelming bipartisan support in response to the controversy and debate over the 2000 presidential election. Intended to make federal elections fairer and more accurate by addressing concerns over incomplete voter registration lists, inaccurate voting machines, and inefficient election administration, HAVA contains numerous requirements that every state must meet when conducting federal elections. These requirements, most of which are to take effect between January 1, 2004, and January 1, 2006, include replacing punch card and lever-operated voting machines, allowing voters to verify their votes before casting their ballots, providing voters with provisional ballots, providing access for voters with disabilities, and creating a statewide voter registration list.

To help states comply with its requirements, HAVA provides funds designated for various purposes, such as administering federal elections (discretionary funds), replacing voting machines (voting machine replacement funds), and complying with HAVA requirements mandating a uniform and nondiscriminatory election process (either discretionary or mandatory requirements funds). In fiscal year 2003–04, California received a total of \$180.6 million in federal HAVA funds, and it expects to receive another \$169.6 million in fiscal year 2004–05.

As the State's chief elections official, the secretary of state is responsible for implementing HAVA's requirements in California. However, insufficient planning and poor management have hampered the efforts of the Office of the Secretary of State (office) to implement these requirements in a timely way. Before it can spend HAVA funds, the office must receive authorization from the Legislature and the Department of Finance (Finance). As of June 30, 2004, the office had spent only \$46.6 million of the \$81.2 million in HAVA funds authorized by the Legislature for fiscal year 2003–04.

Although the office developed a state plan describing how it will meet HAVA's mandatory requirements, it failed to develop a detailed implementation plan for each of its HAVA-related projects. In addition, it did not assign to someone within the office overall responsibility for overseeing the implementation of HAVA's requirements. As a result of these and other failures to apply widely accepted management principles, the office is at risk of failing to meet certain HAVA requirements by January 1, 2006. For example, according to its current schedule, the office will not be able to provide a fully functioning statewide voter registration database by the HAVA deadline. Missing the deadline, the office risks having to undergo a special audit by the federal government regarding its implementation of HAVA and its use of HAVA funds.

Additionally, because the office disregarded controls and exercised poor oversight of staff and consultants, its use of HAVA discretionary funds to pay for activities unrelated to HAVA led to questions about the improper use of these funds. Also, the office failed to document the time spent by its staff members on HAVA activities, as required when salaries and wages are charged to a federal fund source. Staff activity reports submitted by two of the employees we reviewed, as well as 62 of the 169 staff activity reports submitted by regional outreach consultants, reported attendance at events—some of which were partisan in nature—that appear to be unrelated to HAVA purposes. Finally, a law firm retained to provide legal advice on issues related to HAVA performed unrelated work such as writing speeches for the secretary of state that had little if anything to do with HAVA and also invoiced and was paid for services that did not conform with the terms of its contract. Partly as a result of these uses of HAVA funds, the office has come under close scrutiny, and other HAVA funds have been held up by Finance pending completion of a detailed spending plan. Further, the office is at risk of having the federal government require repayment of some, if not all, of the HAVA funds it used to pay employees and contractors.

The office's practice of using noncompetitive procurement methods for services it paid for with HAVA funds does not ensure that the State received the best value. The office avoided competitive bidding for many HAVA expenditures by obtaining and then inappropriately using a Department of General Services (General Services) exemption from competitive bidding. It justified this exemption due to the urgent need to meet the deadlines for certain HAVA requirements. Most of the contracts entered into under the exemption were for services that did

not relate to any specific HAVA deadline and could have been competitively bid had the office planned better. For example, the office entered into contracts with consultants to do voter outreach activities without seeking competitive bids.

Further, the office did not follow best practices in making California Multiple Award Schedule (CMAS) procurements. For example, it did not obtain competitive offers for most of its CMAS procurements, and rather than obtain competitive bids and use one contract, the office used multiple CMAS contracts to obtain information technology (IT) consulting services totaling \$631,000 from one vendor and \$1,145,000 from another. General Services prohibits the use of CMAS if the procurement of IT consulting services exceeds \$500,000. Also, the office failed to follow state procurement policy requiring agencies to obtain at least two informal responsive bids for commodity purchases over \$5,000.

Additionally, the office bypassed the Legislature's spending approval authority when it entered into 18 outreach consultant contracts in fiscal year 2004–05 valued at \$230,400 and paid contractors \$84,600 through its HAVA administration account for services related to those contracts.

Finally, the office failed to disburse voting machine funds within the time frames outlined in its grant application package, internal procedures, and contracts with counties, delaying check delivery by an average of 108 days and causing some to lose interest income they could have used in replacing their voting systems.

In May 2004, in an attempt to address issues related to its HAVA implementation, the office began corrective actions to ensure the proper expenditure of HAVA funds, including terminating its contracts with all regional outreach consultants in late September 2004. Recognizing the need for project management services, in June 2004 the office began soliciting proposals for these services, and gave notice of its intent to award a contract on December 1, 2004.

RECOMMENDATIONS

To ensure that it successfully implements the requirements called for in HAVA, the office should take the following steps:

- Develop a comprehensive implementation plan that includes all HAVA projects and activities.

- Designate the individuals responsible for coordinating and assuring the overall implementation of the plan.
- Identify and dedicate the resources necessary to carry out the plan and assign roles and responsibilities accordingly.
- Establish timelines and key milestones and monitor to ensure that planned HAVA activities and projects are completed when scheduled and meet expectations.

To establish or strengthen controls, comply with federal and state laws, and reduce the risk that HAVA funds are spent inappropriately, the office should take the following actions:

- Establish and enforce a policy prohibiting partisan activities by employees and consultants hired by the office that includes an annual certification that employees have read and will abide by the policy.
- Standardize the language used in all consultant contracts to include provisions regarding conflicts of interest and incompatible activities such as partisan activities.
- Ensure that time charged to federal programs is supported with appropriate time sheets and certifications.
- Follow competitive bidding requirements to award contracts and restrict the use of exemptions to those occasions that truly justify the need for them.
- Follow General Services policies when using CMAS for contracting needs.
- Comply with state policy for procuring commodities.
- Prohibit fiscal year 2004–05 expenditures for non-administrative HAVA activities until it receives spending authority from Finance and the Legislature.

AGENCY COMMENTS

The office states that it appreciates the report and recommendations and intends to implement as soon as possible the recommendations not already implemented. It also provides clarifications on certain issues that it believes need to be included to make the report more accurate. Our comments follow the office's response. ■

INTRODUCTION

BACKGROUND

The California secretary of state, a constitutionally established elected position, is the chief elections officer of the State. Among other duties, the Office of the Secretary of State (office) is responsible for administering and enforcing California's election laws. In fulfilling this responsibility, office executive staff determine policy associated with the election process and administer programs to modernize voting equipment, educate voters, and protect voters' rights. The office also provides guidance and direction to county elections officials in the administration of elections. Among its ongoing activities are those associated with implementing the requirements of the federal Help America Vote Act of 2002 (HAVA). Over the last three fiscal years, the office employed a total of 25 full- and part-time employees, not including at least eight executive office staff and a number of consultants, to work on HAVA activities.

Organization of the Office of the Secretary of State

Executive office—Develops and manages overall office policy and functions as the liaison to other state agencies, the Legislature, the federal government, and other states' secretaries of state.

Elections division—Administers the State's election process, including providing guidance and direction to county elections officials in the administration of elections.

Information technology division—Oversees and sets policy for all information technology projects. Plans, develops, implements, and operates information systems.

Management services division—Provides administrative support services, including personnel, budgeting, and fiscal services.

Source: Fiscal year 2004–05 Governor's Budget.

The office is organized into the executive office and six divisions, three of which are relevant to this report. The executive office and these three divisions, described in the box, administer or provide support for the implementation of HAVA. The executive office is responsible for developing the state plan for implementing HAVA requirements and uses HAVA funds to oversee the voter outreach activities conducted through four regional offices. These regional offices are located in San Francisco, Fresno, Los Angeles, and San Diego. The elections division is responsible for providing HAVA funds to counties for improving election administration, including replacing old punch card voting systems. The information technology division is responsible for implementing the HAVA-mandated statewide voter registration list. Finally, the management services division provides administrative support for implementing HAVA, including fiscal, personnel, contract, and business services.

Of the \$324.1 million appropriated to the office for its fiscal year 2004–05 overall budget, \$26.7 million is from the General Fund, \$266.1 million is from federal HAVA funds, and \$31.3 million is from other funds.

PURPOSE OF HAVA AND ITS REQUIREMENTS

The outcome of the November 2000 presidential election remained undecided for several weeks after election day in the decisive state of Florida. Confusing ballots, computer malfunctions, and misplaced ballot boxes made the presidential election in Florida frustrating and controversial. The closeness of the race also highlighted controversies over the treatment of absentee ballots from military personnel serving overseas, as well as voters who were turned away at the polls because their names did not appear on voter registration lists. The U.S. Government Accountability Office, among others, found that these problems were not unique to Florida and were likely present in many other states.

The controversy and debate over the 2000 presidential election led Congress to seek legislation to make federal elections fairer and more accurate. The result was HAVA, which both houses of Congress passed with overwhelming bipartisan support and the president signed into law in late October 2002. HAVA is intended to address, among other things, incomplete voter registration lists, inaccurate voting machines, inefficient election administration, and the controversy over uncounted military ballots. States must comply with HAVA's requirements mandating uniform voting systems and election administration, including using voting systems that notify voters when they "over-vote" and that give them the opportunity to correct their errors before casting their ballots. Over-voting occurs when a voter casts more votes than is allowed on a ballot (for example, voting for two candidates running for the same office when only one vote is allowed). States must also follow standards for determining what constitutes a vote, standards for provisional voting, and procedures for improved voting by absent military personnel and overseas voters.

HAVA established, among other things, the federal Election Assistance Commission (commission) to provide states with information on federal elections, including information on election equipment. HAVA requires the commission to adopt voluntary guidance—guidelines states can choose not to follow as long as they meet HAVA's mandatory requirements—to assist

them in meeting the mandatory HAVA voting system standards. It was to adopt this voluntary guidance by January 1, 2004, and was to adopt guidance for the provisional voting and voting information requirements, implementation of a computerized voter registration list, and requirements for voters who register by mail by October 1, 2003. This guidance, however, has thus far been limited because the commission was not appointed until December 2003 and did not hold its first public meeting until March 2004, even though the act became law in late October 2002.

HAVA also established a federal program to provide funds to states for activities to improve the administration of federal elections and for the replacement of punch card or lever-operated voting machines. It allows states to use certain HAVA funds to improve the administration of federal elections (discretionary funds). States may use these discretionary funds for activities such as complying with the HAVA requirements mandating uniform and nondiscriminatory election technology and administration (mandatory requirements); improving the administration of federal elections; educating voters; and training election officials, poll workers, and volunteers. HAVA also requires states to use certain designated HAVA funds in qualifying precincts to replace punch card or lever-operated voting systems with voting systems that meet HAVA standards (voting machine replacement funds). States are not required to apply for HAVA discretionary funds or for voting machine replacement funds. However, because this money can be used to meet HAVA's mandatory requirements, states are likely to accept these program funds and their associated federal administrative requirements. California is one such state.

In addition to providing discretionary funds and voting machine replacement funds, HAVA provides states with money to assist them in implementing its mandatory requirements. States that submit an approved plan receive these federal funds, which must be used in meeting the HAVA's mandatory requirements or, if the State certifies that it has met the mandatory requirements, for other activities that improve the administration of federal elections. Table 1 on the following page summarizes the HAVA mandatory requirements and their required implementation dates.

TABLE 1**HAVA Mandatory Requirements and When They Must Be Implemented**

HAVA Mandatory Requirements	Effective Date
State voting systems must meet certain requirements, including the following: • Permit voters to verify their votes before their ballots are cast. • Allow voters to change their ballot or correct any error before their ballots are cast. • Produce a permanent paper record for audit and recount. • Be accessible for individuals with disabilities. • Provide alternate language accessibility. • Comply with Federal Election Commission error rate standards.	January 1, 2006
States must implement a single, uniform, official, centralized, interactive, and computerized statewide voter registration list that is defined, maintained, and administered at the State level.	January 1, 2006*
States or local elections officials must do the following: • Permit eligible individuals to cast provisional ballots and have free access to a system that will inform them whether their votes were counted and, if not counted, the reasons why. • Require individuals to meet certain identification requirements if they register to vote for the first time in a state or jurisdiction by mail. • Ensure the public posting of certain voting information at each polling place on the day of each federal election.	January 1, 2004

Source: Help America Vote Act of 2002.

* This deadline applies only to states that seek and are granted a waiver to extend HAVA's January 1, 2004, implementation date. California requested and received such a waiver.

In addition to the mandatory requirements shown in Table 1, HAVA requires states to establish and implement certain other voting procedures by January 1, 2004. These include establishing and maintaining uniform, nondiscriminatory state-based administrative complaint procedures to remedy grievances and designating a single office that is responsible for providing information on voter registration and absentee ballot procedures for absent voters serving in the military and for overseas voters.

THE SECRETARY OF STATE'S APPROVED STATE PLAN

To receive federal funds for use in meeting HAVA's mandatory requirements, the office developed and submitted its state plan, as required by HAVA. The office appointed a 24-member advisory committee made up of individuals representing different interests in the State to assist in preparing the plan and considered public input in developing the final version. The office submitted the plan titled *My Vote Counts: California's Plan for Voting in the 21st Century*, to the commission in August 2003.

The plan responded to each of the 13 areas that HAVA required the State to address, ranging from describing how it will use the funds to meet HAVA's mandatory requirements to indicating how it intends to adopt performance goals and measures to determine its success in carrying out the plan, including timetables for meeting each plan element, the criteria to be used to measure performance, and the official responsible for ensuring that each performance goal is met.

The August 2003 state plan also provided a proposed budget for each of the activities that the office planned to undertake to meet HAVA mandatory requirements and for other activities. In September 2004, the office updated this proposed budget to include more detailed information and to set aside a reserve of 25 percent. Table 2 lists the office's proposed use of the funds it received in fiscal year 2003–04 and expects to receive in fiscal year 2004–05 to meet HAVA's mandatory requirements and for other activities, as outlined in its September 2004 update.

TABLE 2

**Planned Allocation of HAVA Mandatory Requirements Funds
(In Millions)**

Planned Use	Proposed HAVA Funds*
Activities to meet mandatory requirements	\$120.6
Other activities	77.6
Reserve of 25 percent	66.0
Total	\$264.2

Source: Secretary of state's September 2004 update to the state plan titled *My Vote Counts: California's Plan for Voting in the 21st Century*.

* The total mandatory requirements funds shown in the secretary of state's September 2004 update to the state plan include \$94.6 million received in fiscal year 2003–04 and \$169.6 million expected in fiscal year 2004–05.

FEDERAL HAVA FUNDS AWARDED AND SPENT

In fiscal year 2003–04, federal agencies awarded or granted HAVA funds to the office totaling \$180.6 million. The office received a \$1.4 million grant from the U.S. Department of Health and Human Services for making voting machines and facilities

accessible to individuals with disabilities, but it has yet to spend any of these funds. It also received and deposited in the state treasury HAVA funds consisting of \$27.3 million for discretionary activities, \$57.3 million for required voting machine replacement, and \$94.6 million to meet mandatory requirements.

In August 2003 the office used the process set forth in the Budget Act of 2003, Section 28, to obtain state authorization to spend the discretionary and voting machine replacement funds. This process allows state agencies to apply for authorization to spend federal funds outside the regular state budget process when the amount and timing of federal funds cannot be anticipated. The office spent some of the HAVA discretionary and voting machine replacement funds in fiscal year 2003–04 but has not spent any of the \$94.6 million in mandatory requirements funds it received in June 2004.

Table 3 shows the HAVA funds awarded to the office, the amounts the Department of Finance (Finance) and the Legislature authorized the office to spend, the amounts the office spent or obligated, and the amounts remaining unspent or unobligated as of June 30, 2004.

TABLE 3

**HAVA Funds Awarded, Authorized, Spent or Obligated, and Unspent or Unobligated as of June 30, 2004
(In Millions)**

HAVA Funds	Federal HAVA Funds Awarded	Authorized Spending Amount	Amount Spent or Obligated	Amount Awarded but Unspent and Unobligated
Discretionary funds	\$ 27.3	\$23.9	\$ 6.9	\$ 20.4
Voting machine replacement funds	57.3	57.3	39.7	17.6
Mandatory requirements funds	94.6	0.0	0.0	94.6
Funds to provide access for individuals with disabilities	1.4	0.0	0.0	1.4
Totals	\$180.6	\$81.2	\$46.6	\$134.0

Source: Federal award documents and Office of the Secretary of State budget and accounting records.

Through the Budget Act of 2004 (budget act), the State appropriated \$324.1 million to the office for fiscal year 2004–05, of which \$266.1 million represents HAVA funds. The majority of these federal funds consists of \$94.6 million in mandatory requirements funds that were received in fiscal year 2003–04

and \$169.6 million in additional HAVA mandatory requirements funds that the office expects to receive from the commission in fiscal year 2004–05. Provisions in the budget act require the office to submit a detailed spending plan to Finance before it receives authorization to spend these HAVA funds.

However, the office also did not spend or obligate \$17 million of its discretionary and \$17.6 million of its voting machine replacement funds that it had authority to spend in fiscal year 2003–04 and did not include these unspent federal funds in its budget request for fiscal year 2004–05. In July 2004 it requested from Finance but was denied the authority to spend these funds in fiscal year 2004–05. After various attempts by the office to obtain authority to spend both fiscal years 2003–04 and 2004–05 HAVA funds, in early September 2004, Finance and the Legislature authorized the office to spend \$15.2 million of the \$94.6 million mandatory requirements funds on certain activities. They considered these activities as essential for the November 2004 federal election. In the meantime, according to staff at Finance, the office provided in mid-July a general overview of the HAVA spending plan for its fiscal year 2004–05 budget in response to the requirement in the budget act, but in late August it withdrew and replaced that plan with a second spending plan. Staff at Finance did not consider the August plan detailed enough to meet the budget act’s requirements. According to the chief assistant secretary of state, the office revised its spending plan to include additional information and resubmitted the plan on December 2, 2004.

APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS

A whole body of law exists regarding the use of public resources, including federal funds. For example, both federal and state laws generally prohibit the use of public funds for partisan political activities for the purpose of affecting the outcome of a campaign. HAVA does not specifically address the use of federal funds for the purpose of partisan political activities, except with regard to an aspect relating exclusively to college voter registration. However, that omission is not uncommon with federal programs. Instead, the use of federal funds to support partisan political activities is addressed by the Hatch Act, which prohibits federally funded employees, including state employees who work primarily on federal programs, from engaging in partisan political activity for the purpose of interfering with or affecting the results of an election or a nomination for office.

Similarly, under California law the general rule is that state funds may not be used for those purposes. Moreover, other federal regulations—such as Office of Management and Budget circulars A-87, A-102, and A-133—establish principles and provide guidance for determining whether various costs are allowable and how they are to be charged to federal programs, and establish uniform rules used for administering federally funded grants and awards made to state and local governments. They also provide standards for ensuring consistency and uniformity in the federal audit requirements used when auditing state and local governments' expenditures of federal funds.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) review the office's fiscal year 2003–04 budget request and verify that all components of the HAVA grants were implemented within the spirit and letter of the law. Specifically, the audit committee asked the bureau to review and evaluate relevant laws, rules, and regulations; to determine whether the office used HAVA funds only for allowable purposes and in accordance with Section 28 of the Budget Act of 2003; and to determine whether the office implemented HAVA in compliance with federal requirements. It also asked the bureau to review and evaluate the office's policies and procedures for administering HAVA funds, including the process of awarding and disbursing those funds, and to determine whether it effectively oversees the use of the funds it awards to ensure that recipients use them only for allowable purposes.

We reviewed and evaluated relevant state and federal laws, rules, and regulations and identified those that were applicable and significant to the audit.

To determine whether the office used HAVA funds appropriately, we selected a sample of expenditure transactions paid for with HAVA funds and evaluated whether the activities and costs were allowable under HAVA, the state plan, and Section 28 of the Budget Act of 2003. In testing HAVA expenditures, we selected 10 personal services, 25 operating expenses, and five grant payment transactions that the office paid in fiscal year 2003–04, and reviewed certain fiscal year 2004–05 charges to HAVA funds. We also interviewed management staff and reviewed accounting and other records to determine if the costs charged to HAVA were allowable and appropriate.

To determine whether the office implemented HAVA in compliance with federal requirements, we interviewed key management and staff to understand the office's policies and procedures for administering HAVA funds, including requesting any plans and timetables for implementing HAVA requirements. We also evaluated the process the office uses to award and disburse HAVA funds. Further, we interviewed key management and staff and reviewed any relevant records or documented procedures to understand the process the office uses to oversee the allowable uses of HAVA funds by grant recipients. Additionally, we contacted the U.S. Election Assistance Commission to obtain clarification on HAVA requirements. Finally, we sent registered letters to selected former staff and consultants that worked on HAVA projects and interviewed those that agreed to talk to us in an attempt to learn more about how HAVA-funded activities were carried out and administered. ■

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AUDIT RESULTS

THE OFFICE OF THE SECRETARY OF STATE DID NOT USE SOUND MANAGEMENT PRACTICES THAT WOULD ENSURE THE SUCCESSFUL IMPLEMENTATION OF THE FEDERAL HELP AMERICA VOTE ACT

The Office of the Secretary of State (office) is in danger of failing to meet one future requirement and other important implementation milestones of the federal Help America Vote Act of 2002 (HAVA). This risk is the result of the office's poor management of the HAVA implementation. Although the office developed and prepared a high-level state plan that identifies several HAVA activities it planned to undertake, it did not sufficiently plan the implementation of each activity, nor did it use all the HAVA funds it was authorized to support its efforts. Additionally, the office did not designate anyone to be responsible for overseeing the overall implementation of HAVA, nor did it designate the individuals responsible for implementing each HAVA activity. Further, the office did not provide clear direction to staff regarding their HAVA responsibilities. These and other shortcomings came about because the office did not sufficiently plan for the new responsibilities called for by HAVA using widely accepted management principles and practices.

These principles include effective planning, organizing, directing, monitoring, and control. Good management starts with good planning. Good planning helps ensure successful results. Planning includes establishing goals and objectives, determining the best course of action to achieve those goals and objectives, determining the resources needed to implement the plan, considering and planning for contingencies, and developing a plan of action that includes all of these elements. The next step is to organize the resources necessary to effectively execute the plan. This step includes ensuring that the required materials and equipment are procured and ready for use when scheduled, any needed training or instruction is provided, and everyone understands their respective roles and responsibilities and how they relate to the overall success of the plan. To mobilize resources toward executing the plan, clear direction must be given to ensure success. Staff must receive instructions on what activities each is expected to perform and a schedule showing when planned activities must be completed. To ensure

that mobilized resources are executing activities according to the plan and that necessary adjustments are made promptly, regular and consistent monitoring must take place, including a method to measure whether results are meeting the plan's targeted goals and objectives. When problems arise or activities are not achieving expected results, prompt adjustments must be made to correct the situation and get activities back on track with the plan's goals and objectives.

Because the office did not use many of these management principles and practices in its implementation of HAVA, some required activities are behind schedule and in danger of failing to meet a mandated deadline and others do not appear to be appropriate. As a result, the office risks having to undergo a special audit by the Election Assistance Commission (commission) regarding implementation of HAVA and its use of federal funds for improving its federal election administration. In the sections that follow we describe some of the problems that resulted from the office's poor management practices in implementing HAVA.

The Office's Lack of Planning Is Delaying Its Implementation of Some HAVA Requirements

The office may not fully implement a computerized statewide voter registration list by the January 1, 2006, deadline imposed by HAVA.

The office is in danger of failing to meet the deadline for at least one HAVA requirement and other important future implementation milestones. It may not fully implement by the January 1, 2006, HAVA deadline a computerized statewide voter registration list that is maintained and administered at the state level.¹ An October 2004 feasibility study of the development of the office's statewide voter registration database reported a target completion date of January 1, 2006. However, the final phase of the project, which includes providing training to office staff and county elections staff, is not expected to be complete until June 30, 2006, six months after the HAVA deadline. According to the commission, the January 1, 2006, deadline is intended to apply to a fully functioning system that is in use by all counties of a state. According to its current schedule, the office will miss the HAVA deadline because its statewide voter registration database will not be in full use until after January 1, 2006.

Further, the office could have been more proactive in assisting counties in achieving the successful statewide implementation of other HAVA requirements. HAVA requires states to implement

¹ HAVA requires states to comply by January 1, 2004, unless they seek and are granted a waiver to comply by January 1, 2006. California sought and received such a waiver.

by January 1, 2004, provisional voting procedures and a free access system, certain voter information posting requirements, and specified voter identification requirements. Provisional voting procedures allow a voter to cast a provisional ballot if his or her name is not listed on the official list of eligible voters for the precinct in which the voter lives, as long as the voter is able to provide certain information. A free access system, such as a toll-free telephone number or Web site, is required to allow voters who cast a provisional ballot to determine whether their vote was counted and, if not counted, determine the reason why. Election officials must also provide written information to voters who cast a provisional ballot, describing how to determine whether their vote was counted. HAVA requires that certain voter information also be publicly posted at each polling place, including a sample version of the ballot, information about the date and hours the polling place will be open, instructions on how to vote and how to cast a provisional ballot, instructions for mail-in registrants and first-time voters, and general information on voting rights under applicable federal and state laws. Finally, HAVA requires that first-time voters who register by mail meet certain identification requirements.

The U.S. Department of Justice reported numerous instances of noncompliance with HAVA requirements at California polling locations during the March 2004 election and concluded that the instances of noncompliance were caused by inadequate training of elections officials and poll workers about the new HAVA requirements.

However, in a June 2004 letter to the office, the U.S. Department of Justice (Justice) reported that in its monitoring of the March 2, 2004, primary election, it had observed numerous instances of noncompliance with HAVA requirements at several local election polling locations in various counties. For example, Justice noted that the free access system used in one county did not allow voters to determine why their vote was not counted, as required by HAVA, and found no evidence of a free access system in another county. Justice also observed multiple examples of inconsistent identification procedures for voters who register by mail. Further, Justice observed polling places that did not post all the information required by HAVA. Overall, Justice concluded that its observations did not indicate that these instances of county noncompliance were willful. Rather, Justice attributed such noncompliance to a lack of adequate training of elections officials and poll workers about the new HAVA requirements. In closing, Justice stated that although it might be necessary for county officials to undertake the bulk of this training, the office has the primary responsibility to ensure that HAVA's provisions are implemented statewide. Therefore, Justice requested that the office provide a description of the steps it had taken to provide information and resources to

counties to ensure proper instruction and implementation of HAVA's terms, and what further steps it was prepared to take to make full compliance with HAVA a reality statewide.

The secretary of state responded to Justice in a July 20, 2004, letter stating that California was committed to the full and effective implementation of HAVA and would take whatever steps appropriate to ensure timely compliance with all provisions of federal voting rights laws. The secretary of state listed a number of actions he stated the office planned to take or was in the process of taking, including providing information and training regarding provisional voting, the posting of voting rights, and identification requirements for certain voters who registered by mail. He stated that as part of this effort, the office was working with elections officials to educate and train poll workers and officials through making grants available for that purpose. Although the office took various steps in an effort to ensure local elections officials complied with the requirements that were to take effect on January 1, 2004, most occurred too late to be of assistance or had not yet occurred, such as the education and training grants that still had not been disbursed to counties as of November 22, 2004.

Although the office took various steps in an effort to ensure local elections officials complied with the requirements that were to take effect on January 1, 2004, most occurred too late to be of assistance.

According to the elections division chief, the office communicated HAVA requirements to local elections officials and did what it could with its available resources to ensure compliance with these requirements. For example, in March 2003 the office surveyed counties to determine whether a toll-free number existed for voters to obtain election-related information, and it found that of the 58 counties, 37 did not have a toll-free number, although two counties indicated that they accepted collect calls. This survey, however, did not address whether counties had met the HAVA requirement of allowing voters to determine why their vote was not counted. On August 12, 2003, and January 21, 2004, the office provided guidelines to local election officials for implementing provisional ballot requirements, identification procedures, and the minimum standards of a free access system for voters who cast a provisional ballot. The office surveyed counties again following the March 2004 primary election to determine how they were implementing the free access system requirement. According to the survey results, as of May 2004, three counties still had not implemented a free access system for voters who cast a provisional ballot. The results of a third office survey taken in September 2004 indicated that 45 counties had implemented

a free access system, 10 would accept collect calls, and three counties did not offer free access, nine months after the HAVA deadline of January 1, 2004, for having these systems in place.

In August 2003, the office received authority to spend \$4.4 million to train local poll workers and elections officials in meeting HAVA's requirements, but as of September 23, 2004, had yet to provide these funds to counties.

Further, in its effort to ensure compliance with HAVA posting requirements, the office provided local elections officials the opportunity to order a poster listing voting rights that contained some of the information required by HAVA, and the rest of the information was to be posted by local elections officials. However, it was only after Justice reported noncompliance with this requirement on June 30, 2004, that the office sent a letter to local elections officials on July 22, 2004, directing them to post all required information. Moreover, even though the office had received authority to spend \$4.4 million to train poll workers and elections officials in meeting HAVA's requirements in August 2003, these funds did not get allocated to the counties for that purpose. According to a letter sent to the commission on September 23, 2004, by a person who chaired a subcommittee of the statewide association of county elections officials, the office had not provided any funding or guidance to train poll workers or elections officials.

The office also told us that it conducted election-day poll monitoring to determine whether election laws and voter rights were being enforced. According to the office, the poll monitoring conducted in March 2004 was not focused on HAVA, but poll monitors reported multiple instances of noncompliance with the posting of voters' rights information. Our review of the training manual that the office provided to its poll monitors for the March 2004 primary election, however, did not indicate how monitors would ensure that local elections officials complied with HAVA requirements. According to the office, it provided verbal instruction to poll monitors to observe for HAVA compliance. The office supplied its poll monitors with a checklist to use in the November 2, 2004, election that was designed, in part, to measure compliance with certain HAVA requirements.

These shortcomings in meeting HAVA deadlines can be traced to the office's incomplete planning for each of the activities it intended to undertake. Although the office listed these HAVA requirements in its August 2003 state plan, it failed to include how and when it would implement them. In fact, the office's state plan neglected to include implementation plans for any of its planned activities. Specifically, though HAVA requires that it include such information, the state plan did not detail the goals and objectives or the measures that it would use to gauge

whether the planned activities were successful, the timetables and milestones for tracking its progress, and the individuals it assigned to be responsible for ensuring that each goal and objective is met. Despite these deficiencies, the state plan was approved at the federal level.

The Office Has Not Used All the HAVA Funds It Was Authorized to Spend

The office has failed to use all its resources to meet HAVA implementation deadlines. Due to its incomplete planning, although it received authorization to spend \$81.2 million in federal HAVA funds in fiscal year 2003–04, as of June 30, 2004, it had spent or obligated only \$6.9 million of the \$23.9 million in discretionary funds earmarked for improving the administration of federal elections and \$39.7 million of the \$57.3 million in voting machine replacement funds. In approving the office’s August 2003 Section 28 spending authorization application for fiscal year 2003–04, the Department of Finance (Finance) authorized it to spend HAVA discretionary funds in the five areas shown in the box. In addition, Finance authorized the office to spend \$57.3 million in voting machine replacement funds to pay counties for their replacement of punch card or lever-operated voting machines. According to its executive staff, all the spending for the HAVA activities the office outlined in its Section 28 application did not occur because of its uncertainty about the cost of complying with various mandatory components of HAVA, such as the statewide voter registration database, and the fact that most of its resources in fiscal year 2003–04 were focused on addressing various other election issues.

Fiscal Year 2003–04 Section 28 Authorized Spending (In Millions)

Election official and poll worker training	\$ 4.4
Election support and training	11.55
Disability and language access	3.55
Administrative costs	1.7
Electoral system mandate:	2.7

Source: Office of the Secretary of State’s August 2003 Section 28 application.

Executive staff stated that the October 2003 special recall election, the March 2004 primary election, and the controversy over the problems with certain electronic voting equipment that surfaced in the primary election consumed office resources. As a result, the office was unable to spend all the HAVA funds authorized in fiscal year 2003–04. Although we acknowledge that it had a busy schedule, the office was aware of HAVA’s requirements since it became law in October 2002 but did not begin planning at that time. Moreover, as of August 2003 the office had the authority to spend HAVA funds for the purposes called for in HAVA. Had the office implemented some of the

proposed projects outlined in its Section 28 application, such as the training for elections officials and poll workers, it could have been in a better position to assist the counties in meeting the requirements by January 1, 2004. Further, the office could have chosen to use some of its HAVA discretionary funds to hire consultants to help in developing the detailed plans the office needs for implementing its proposed projects to comply with HAVA's requirements.

The office did not develop detailed plans for implementing the projects it proposed in its August 2003 HAVA state plan and has not made significant progress in implementing the plan.

As of the end of October 2004, the office had yet to spend any of the \$94.6 million in federal funds that California received in June 2004 for achieving compliance with HAVA's mandatory requirements. Although it submitted in August 2003 a state plan that outlined, in broad terms, its proposed uses of these funds to meet HAVA's mandatory requirements, the office did not follow up this high-level plan with more detailed plans for implementing each of those proposed uses or projects. Moreover, the office has not made significant progress in implementing its state plan. The Appendix provides a list of the office's planned uses of HAVA funds, as outlined by its Section 28 applications and its 2004 update to the state plan, and their status as of November 2004. The planned uses are categorized by the source of HAVA funding available to the office to pay for them.

According to the office, beginning in August 2004 it prepared and submitted spending plans to Finance for approval. Although these plans provide a general overview of the scope for each project, they do not address specifics such as how and when the office plans to implement the projects, establish measures to be used in assessing the performance of each project, or identify a person responsible for the overall success of each project. Thus, although the office had authority to spend HAVA funds beginning in August 2003 and should have developed implementation plans even earlier, it has yet to provide detailed plans for implementing all its HAVA projects.

Partly because it did not fully plan its activities for implementing HAVA, the office has recently come under close scrutiny and is being held to account for its activities. Although the office received a fiscal year 2004–05 federal fund appropriation for HAVA funds in the Budget Act of 2004 (budget act), a provision of this budget act requires the office to submit a detailed spending plan to Finance and the Legislature before it can use these funds. In addition, the commission has recently expressed concerns about the office's implementation of HAVA requirements and has indicated that it may withhold any

additional HAVA funds that the State may be entitled to receive until it is assured that the office has used federal HAVA funds appropriately in accordance with its state plan and federal law.

The Responsibilities for Administering the Activities Required by HAVA Are Not Clearly Assigned

The office did not assign anyone the overall responsibility for implementing the HAVA requirements.

The lack of implementation plans for various HAVA projects could be due in part to a lack of project management oversight. According to the office's executive staff, no one individual was assigned the overall responsibility for implementing the HAVA requirements. Instead, direction for administering HAVA activities came from many staff in the executive office. In its Section 28 applications for requesting spending authorization, the executive office provided its budget staff with the list of HAVA projects and estimated costs but gave no details regarding the implementation of the projects. In addition, various executive office staff requested contracts for HAVA consultants but did not complete the normal contract request paperwork that would have required them to justify in detail the HAVA work to be performed. Executive office staff also frequently directed the accounting office staff to expedite payments to HAVA consultants. In contrast, as we discuss in more detail later in the report, executive office staff caused delays in the release of checks to counties for replacing punch card and lever-operated voting machines. Moreover, no one performed the management tasks of specifying who would manage each proposed HAVA project, defining the scope of each project, defining and estimating the duration of project activities, assigning the activities and creating a project schedule, determining resource needs and costs, and developing a project implementation plan.

In fact, members of the California Association of Clerks and Election Officials (association), an organization of local government officials representing all 58 counties, have complained about a lack of information sharing by the office in regards to HAVA. In late December 2003 the association wrote to the office complaining about the lack of communication regarding guidelines for implementing HAVA provisions, its HAVA funding allocation decisions, and its decision to require that voting machines be capable of printing voting results without first discussing the decision with the association. For example, according to an association member, although the office had drafted HAVA guidelines in early December 2003, it waited until January 21, 2004, to send these guidelines to county elections officials for use in the March 2, 2004, primary election.

Further, this association member expressed frustration that the office did not provide clear reasons for its delay in disbursing HAVA voting machine replacement funds, even though it had the check for this association member's county ready to be sent for nearly a month. Other examples of problems in the office's communications with association members include asking for comments and feedback regarding the feasibility study report for the statewide voter registration database one week before the November 2, 2004, presidential election, when local elections officials serving as association members were swamped with work preparing for the election, and not posting current uniform procedures prior to the November election to assist counties in making consistent decisions regarding counting provisional ballots.

In November 2004, the office told the association by letter that it was forming a task force to assist in implementing HAVA voting system provisions. The office indicated that much of the funding to meet voting system requirements will come from HAVA and state funds. The office's letter also stated that methods and criteria for allocating these funds needed to be established as soon as possible.

The office eventually recognized its need for project management services to successfully implement HAVA and gave notice of its intent to award a contract for such services on December 1, 2004.

The office eventually recognized its need for project management services to implement HAVA successfully. In late June 2004, it solicited proposals from vendors for consulting services, including project management, fiscal analysis, general auditing and reporting, and other administrative tasks to ensure the successful implementation of HAVA. In early October 2004, the office announced its intent to award a contract to a consulting firm for these services, but shortly afterward the award was protested for various reasons, including a math error in the overall scoring of the proposals, and the office then rejected all the proposals. It reissued its request for proposals for project management services on October 18, 2004, and gave notice of its intent to award a contract on December 1, 2004.

The State's Chief Elections Officer Lacks a Policy That Strictly Prohibits Partisan Activities

Although the office has a conflict-of-interest code and an incompatible activities policy, they do not prohibit the real or perceived participation in partisan activities by employees or consultants that could have prevented some of the questionable uses of HAVA funds that we discuss later in the report. The secretary of state is the chief elections officer of the State, and

his office is responsible for the administration and enforcement of state election laws. Inherent in this responsibility is the need to assure fair and impartial elections and, thus, the need to ensure that the office's employees and consultants remain strictly nonpartisan, both in appearance and in their conduct.

We found that neither the office's conflict-of-interest code nor its statement of incompatible activities specifically prohibits partisan activities by its employees or contract consultants.

The office's conflict-of-interest code prohibits employees from participating in governmental decisions that may have a beneficial financial effect on their economic interests and requires certain designated employees and consultants to report their financial interests. The office also provides its officers and employees with a statement informing them of activities that are inconsistent, incompatible, or in conflict with their duties. However, both the conflict-of-interest code and the statement of incompatible activities are silent in regards to specifically prohibiting employees and contract consultants from participating in, or appearing to participate in, partisan activities.

Neither the office's conflict-of-interest code nor its statement of incompatible activities specifically prohibits office employees or its contract consultants from participating, or appearing to participate, in partisan activities.

As we discuss in the Introduction, both federal and state laws generally prohibit the use of public funds for partisan political activities. The Hatch Act prohibits state employees who primarily work on federally funded programs from engaging in partisan political activity for the purpose of affecting the results of an election or nomination for office. Similarly, state law prohibits any elected state or local officer, including any state or local appointee, employee, or consultant, from using or permitting others to use public funds for campaign activities or other purposes not authorized by law. The Federal Elections Commission (FEC), the federal agency charged with administering and enforcing laws that govern the financing of federal elections, specifically addresses partisan political activities by its employees. Regulations of the FEC require that its employees be informed at least annually about standards of conduct, including avoiding any action that affects adversely the confidence of the public in the integrity of government, or that might result in or create the appearance of giving favorable or unfavorable treatment to a person due to any partisan, political, or other consideration. Because of its role in the political process, these regulations require the FEC to impose additional restrictions on its employees beyond those in the Hatch Act. For example, federal regulations prohibit FEC employees from publicly supporting

a candidate, political party, or political committee subject to its jurisdiction and do not allow employees to display partisan buttons, badges, or other insignia on FEC premises.

Without a policy that prohibits real or perceived partisan activity by its employees and consultants, the office risks undermining the public trust in the State's election process.

Without a policy that prohibits real or perceived partisan activity, the office runs the risk that its employees or consultants will participate or appear to participate in activities that create the appearance of bias, thus potentially undermining the public trust in the State's election process. As the State's chief elections officer, upholding the public's trust in the election process is an inherent responsibility of the secretary of state, as it is of the employees and consultants that work for the office.

Furthermore, although the office includes provisions regarding incompatible activities and potential conflicts in some of its consultant contracts, its practice is inconsistent. Many of the HAVA consultant contracts we reviewed failed to include any incompatible activities and conflict-of-interest provisions. Moreover, when the office did include such provisions, it did so inconsistently. For example, one HAVA consultant contract that covered the period from March 2004 through June 2004 included provisions for both incompatible activities and for potential conflicts. The incompatible activities provision notified the consultant of the state law that prohibits the use of public resources for campaign activities or other purposes not authorized by law. The provision for potential conflicts required the consultant to advise the office of any employment or consulting relationships that may constitute a potential conflict with the interests of the office. However, other consultant contracts the office executed subsequent to the March 2004 contract that had such provisions did not include one or both of these provisions. As a result of its inconsistent application of these key provisions in its HAVA consultant contracts, the office cannot be sure that all consultants will know not to use public resources to participate in partisan activities that are prohibited by state laws or to advise the office when they encounter a potential conflict of interest.

The Office Did Not Provide Job Descriptions to Employees Working on HAVA Activities

In our review of personal service costs, we found that the office did not provide many employees with job descriptions that explained their HAVA responsibilities. Job descriptions are important to ensure that employees understand each of their

HAVA roles and responsibilities, especially considering that the office has had no past experience with administering federally funded activities. Additionally, these job descriptions could be a valuable aid in making employees aware of Hatch Act requirements, conflicts of interest, incompatible activities, and other requirements important in administering federal funds.

However, only two of the employees we reviewed could demonstrate that they had received job descriptions. Because the office no longer employs three of the 10 employees we selected to review, we were able to interview only seven to understand the extent to which they worked on HAVA activities. Five of the seven employees indicated that they never received a job description covering their HAVA duties. One of the employees who did receive a description of his duties as an elections specialist provided a job description that indicated 25 percent of his time should be dedicated to HAVA activities. However, according to a survey this employee prepared to document his work, 46 percent of his time was spent on HAVA activities during fiscal year 2003–04. The second employee who received a job description was hired as a regional director. However, this employee originally provided us with a job description that did not specifically refer to any HAVA duties, even though 100 percent of this employee's time was charged to HAVA. The job description included general outreach activities; coordinating the implementation of new technologies developed by the office; acting as the point of contact and protocol officer on behalf of the office to foreign consulates and trade offices located in the region; and recommending, developing, and implementing customer services and policy oversight of certain customer services in the region. None of these described duties directly relate to HAVA activities. When we asked the employee to confirm that the duty statement he provided was, in fact, for his position, he gave us an updated August 2004 duty statement that included activities that correspond with HAVA requirements and indicated that his activities had been specific to HAVA since October 2003. Nevertheless, as we discuss later in the report, we identified several instances where this employee reported attending events that appear to have no relation to HAVA activities.

Without job descriptions that explain employee roles and responsibilities, the office cannot be sure that employees adequately perform those activities and comply with HAVA and other legal requirements.

Without job descriptions that explain employee roles and responsibilities, the office cannot be sure that employees hired to perform HAVA activities adequately perform those activities and comply with HAVA and other legal requirements.

THE OFFICE'S POOR ADMINISTRATION OF HAVA LED TO QUESTIONED COSTS

The office overrode and, in many cases, lacked controls in its administration of the HAVA funds. In our review of the personal service costs charged to HAVA funds, we found that the office did not use time sheets or the certifications required by federal cost principles to support the time employees spent working on HAVA activities and the \$1,025,695 in personal service costs it charged to HAVA in fiscal year 2003–04. Additionally, we found that the office failed to properly and adequately account for the activities of some of its HAVA consultants. In many cases, consultants reported performing activities that had no relationship to HAVA requirements. As a result of the office's apparent lack of controls and poor oversight in the administration of HAVA projects, we question some of the costs charged and paid with HAVA funds.

In May 2004 the office began taking various measures in an attempt to correct some of these problems. However, a September 2004 memorandum from the secretary of state indicated problems with managing contract consultants were continuing.

The Executive Office Did Not Follow Many Established Control Processes in Its Administration of the HAVA Program

Our review found many examples in which executive staff of the office overrode internal controls. For example, although in fiscal year 2002–03 the office required staff to complete time sheets to support the time they spent working on HAVA activities, for fiscal year 2003–04 it discontinued the use of these time sheets. We discuss this issue further in the next section. Additionally, although it had a process for requesting and authorizing the expenditure of funds, including for consultant contracts, the office's executive staff did not always follow its process when requesting contracts. Usually, the requestor completes a form that provides a justification for the requested contract services. This form is routed through the budget office within management services and then to the executive office for review and approval. However, because many HAVA contract requests came directly from the executive office, established controls for the independent review and approval of these requests by the other offices were frequently bypassed. As a result, the nature of the work for many of these contracts was not justified as to its relationship to HAVA. For example, no explanation was provided on how the scope of the contract related to HAVA, nor was there a process established for selecting the consultants

Because many HAVA contract requests came directly from the executive office, established controls for the independent review and approval of these requests were frequently bypassed.

who received the contracts. Further, as we discuss in more detail later, although checks issued by the State Controller's Office are usually sent directly to the payee, executive staff had checks payable to counties for replacing their punch card voting machines sent to the office. The executive staff would then decide when to release the checks to the counties, causing delays in the delivery of these funds. However, no reasonable business need was provided to justify this additional step in the process.

Partly because the office overrode existing processes and controls, in several instances it used HAVA funds to pay for activities that are not supported or are questionable because they do not appear to relate to HAVA. We discuss these activities and their associated questioned costs in the following subsections.

The Office Could Not Support the Personal Service Costs It Charged to HAVA

To support the salaries and wages charged to federal awards, federal cost principles require state agencies to document the time spent by their employees working on federally funded programs. These principles mandate that, to support the amount of salaries and wages charged to a federal fund source, certifications must be prepared at least semiannually for all those employees who work full-time on a single federal award. These cost principles also require that an employee or supervisory official having firsthand knowledge of the work performed sign such certifications. Further, these cost principles require that the allocation of all salaries or wages for employees who work less than full-time on a single federal award be supported by monthly personnel activity reports or equivalent documentation, such as monthly time sheets.

However, the office neither prepared the required certifications for its employees who worked full-time on HAVA activities nor instructed its employees who worked part-time on HAVA activities to complete monthly time sheets or other personnel activity reports to support the \$1,025,695 in personal service costs charged to HAVA funds in fiscal year 2003–04. Of the 10 employees we reviewed, five charged 100 percent of their salaries and benefits, totaling over \$497,000, to HAVA. However, according to management staff and the employees we interviewed, the office has never prepared certifications for its employees who work full-time on HAVA activities. The five remaining employees we reviewed charged less than 100 percent of their time to HAVA-funded activities. The total

The office charged \$1,025,695 in personal service costs to HAVA funds in fiscal year 2003–04 without supporting these costs with employee certifications or time sheets as federal cost principles require.

amount the office charged to HAVA funds for these employees during fiscal year 2003–04 was more than \$146,000. The office did require these employees to submit, at the end of fiscal year 2003–04, a document estimating the percentage of time that each worked on HAVA and non-HAVA activities during the fiscal year—a method that is not permitted by federal cost principles. According to four of these five employees, they based the percentages they reported on their best estimates; they could provide no other documentation to support their basis for arriving at those percentages. The other employee kept a personal log of his time.

The office could not explain why it discontinued the use of monthly time sheets to support the time worked on HAVA in fiscal year 2003–04.

Although staff completed monthly time sheets in fiscal year 2002–03 to support the time worked on HAVA, this practice was discontinued at the beginning of fiscal year 2003–04. According to the chief assistant secretary of state, executive management did not know who directed HAVA staff to discontinue the use of these time sheets. Office accounting personnel gave one executive management staff member a HAVA time sheet template to review in June 2003 for use beginning in fiscal year 2003–04; it was designed to track the time employees spent on various HAVA activities during each month. According to the chief assistant secretary of state, although a time sheet process was developed, it was not implemented. The office asserts it is developing a time reporting system retroactive to July 2004 that will meet federal requirements and expects to implement it by December 2004. Nevertheless, the office did not use time sheets in fiscal year 2003–04; thus, it cannot be sure it charged the correct amount of personal service costs to HAVA funds during that fiscal year.

Moreover, of the five full-time employees we reviewed whose entire salaries the office charged to HAVA in fiscal year 2003–04, two submitted staff activity reports for attending certain events that did not appear related to HAVA. One of these employees reported that she attended events such as a legislator’s reception to “spread the word” about the office, a governor’s rally to get a firsthand sense of the governor’s message, and a Chicano Federation annual unity luncheon to network and represent the office. Furthermore, even though the office charged 100 percent of this employee’s salary to HAVA in fiscal year 2003–04, she indicated that only about 80 percent of her time was spent on HAVA activities.

The second employee's staff activity reports indicate that he attended various events such as a Black Women Lawyers Association annual holiday mixer and a celebration of Canada Day to commemorate the events that created the Canadian government, issued resolutions on behalf of the office to the honorees at a Los Angeles Equality Awards Dinner, and marched in a national night out to demonstrate unity against neighborhood crime. In our review of these and many other staff activity reports submitted, we found no indication of how these events relate to allowable HAVA activities. Federal cost principles require that to be allowable, costs must be reasonable, necessary, and allocable to the federal program. As a result, we question the office's use of HAVA funds to pay for such activities.

Without the certifications and time records required by federal regulations, the office cannot assure that the \$1,025,695 in salaries and benefits it paid for with HAVA funds during fiscal year 2003–04 are accurate and allowable. Moreover, charging HAVA funds for staff activities that are not associated with allowed uses of these funds puts the office at risk that the federal government may ask for the repayment of some, if not all, of these funds.

The Office's Poor Oversight of HAVA Consultants Also Resulted in Its Questionable Use of HAVA Funds

The office failed to properly and adequately account for the activities of some of its consultants hired to assist in the implementation of HAVA, resulting in the questionable use of HAVA funds. Federal cost principles require that for costs to be allowable and charged to a federally funded program, the costs must be necessary, reasonable, and allocable to that program. In many instances, we determined that costs the office charged to HAVA funds were for activities that do not appear to relate to HAVA activities, and thus we question the use of federal funds to pay for them.

Thirty-seven percent of the staff activity reports submitted between December 3, 2003, and September 5, 2004, by regional outreach consultants listed one or more activities that had no relationship to HAVA requirements.

For example, of the 169 staff activity reports submitted between December 3, 2003, and September 5, 2004, by the regional outreach consultants hired by the office, 62 (37 percent) listed one or more activities that had no relationship to HAVA requirements. Rather than performing HAVA outreach, some of these consultants reported attending events such as fundraisers and a state delegation meeting for the Democratic National Convention, and indicated they were representing the secretary of state at these events. However, HAVA does not specify

We could not quantify the amounts paid to the consultants for attending partisan or other events unrelated to HAVA, because, until mid-September 2004, the office did not require contractors to indicate on their invoices the activities they were billing for or how much time they spent on each one.

attendance at fundraisers and political delegation meetings as allowable HAVA activities, and some of these activities appear to be partisan in nature. As we discussed earlier, the federal Hatch Act generally prohibits state employees whose primary responsibilities are funded with federal funds from participating in partisan activities relating to campaigns, and state law places similar restrictions on the use of public resources for partisan political activities. Although the application of the federal Hatch Act to contractors is unclear, permitting contractors to engage in partisan activities as part of their work on a federal program certainly violates the spirit of those laws. Furthermore, state law makes it unlawful for a consultant to use public resources for partisan activities. Therefore, we question the office's use of HAVA funds to pay for these types of activities.

However, we could not quantify the amounts paid to the consultants for attending these types of events, because, until mid-September 2004, the office did not require contractors to indicate on their invoices the activities they were billing for or how much time they spent on each one. Therefore, we were unable to clearly link the activity reports the consultants submitted to the invoices the office paid. On the same day in September 2004 that we began our audit, the office changed its policies and now requires that invoices reflect in detail the activities being billed and how much time was spent on each one.

The former undersecretary of state indicated that the office's regional managers, through verbal direction, provide day-to-day supervision of regional outreach consultants and are responsible for ensuring that the scopes of work in their contracts are accomplished. He stated that the special recall election in October 2003 hampered the office's efforts to establish better oversight of contracts, such as having an overall contract administrator/manager who would be responsible for monitoring contract work products and ensuring that progress reports relating to contract activities are submitted regularly. He also indicated that there was no requirement that these consultants submit regular progress reports. The chief assistant secretary of state told us that these regional outreach consultants sometimes submitted staff activity reports, but that they were used more to report on events and were not submitted on a regular schedule.

In another example of using HAVA funds to pay for non-HAVA activities, the office contracted with a law firm to provide expert legal advice on legal issues, procedures, and programs facing

local elections officials to ensure the successful implementation of HAVA requirements. The initial contract, statutorily exempt from competitive bidding, was for \$70,000 and was later amended to increase it to \$220,000. Although not specifically called for in the scope of work, three work products relating to this contract were for speeches prepared for the secretary of state and given in January 2004.

Our review of the written text for these speeches revealed they had little to do with HAVA. For example, the two themes of a speech given at an NAACP retreat were to describe the political landscape in the aftermath of the statewide special election held on October 7, 2003, and to provide the secretary of state's view of the future electoral landscape that would affect voters as politically active participants in the electoral process. Although the speech listed four of HAVA's requirements and stated that federal funding would be available for voter registration and education, more than half of the secretary of state's remarks involved presenting statistics concerning the October recall election, bringing into question whether the entire speech should have been paid for with HAVA funds. The other two speeches clearly had nothing to do with HAVA. One was given at a Unity in Diversity dinner organized by the Indo-American Community Federation, and the other speech was in commemoration of Indian Republic Day. Nevertheless, the office used a total of \$1,050 in HAVA funds to pay the cost of preparing these three speeches.

The office paid a law firm using HAVA funds for the preparation of speeches that had little or nothing to do with HAVA.

Partly because the office used HAVA funds to pay for these types of questionable and non-HAVA-related activities, other HAVA funds have been held up by Finance pending completion of a detailed spending plan. Additionally, the office is at risk of having the federal government require repayment of some, if not all, of the HAVA funds it used to pay for the contractors' activities.

The Office Does Not Adequately Administer Its Consultant Contracts

The office also exercised poor oversight of this law firm's contract, approving and paying almost \$70,000 for invoiced services that violate the terms of the contract. The provisions of the original contract stipulated that the law firm's daily charge for services would not exceed \$1,200 per day and that the firm would provide services one day a week on an as-needed basis for the duration of the contract's one-year term. However, the invoice the law firm submitted for payment in April 2004

covering services rendered from November 17, 2003, through April 7, 2004, lists 17 separate days on which the amount the firm charged exceeded the contract's \$1,200 per day limit. Moreover, rather than providing services one day a week as called for by the terms of the contract, the firm billed the office for 22 days in January, 21 days in February, 23 days in March, and five days in the first two weeks of April 2004. Finally, although the term of the contract was from December 1, 2003, through December 31, 2004, the office paid for services rendered in November 2003—before a binding contract was in place.

We found no indication that the former chief counsel reviewed the April 2004 invoice, even though he was designated as the office's project representative for this contract and, therefore, was presumably more familiar with the legal services rendered and the contract's payment terms. Instead, the invoice was reviewed and approved for expedited payment by the chief assistant secretary of state on April 14, 2004. Had the former chief counsel reviewed the invoice, the office might have avoided making a nearly \$70,000 payment that violated the contract's terms. This weakness in its invoice review and payment approval process not only resulted in the office paying for services that are not fully allowable under HAVA but also resulted in the office paying more than contractually required.

In another example of its poor contract oversight, the office hired a consulting firm to perform public outreach within the context of HAVA. The consultant proposed preparing an outreach plan and was asked to identify specific events, people, and opportunities for outreach. Although the office used HAVA funds to pay this consultant \$4,750, it was unable to provide us with a plan or any other work products for this contract.

The Office Has Taken Some Steps to Improve Its Administration of HAVA Funds

The office attempted to implement some measures to improve its management of HAVA funds between mid-May and mid-September 2004 but was forced to take even stronger actions, including terminating all existing contracts with HAVA regional outreach consultants, because staff and these consultants were not consistently following some of these measures. According to executive staff, the need to implement procedures to ensure the proper expenditure of federal funds first became clear with the departure of the former HAVA outreach coordinator. The office has taken a variety of measures over the past few months

to ensure that HAVA funds are properly managed and spent. The following are some of the more significant steps and the dates they took effect:

- **May 14, 2004**—Instituted a procedure requiring fiscal review and executive staff approval of requests for proposed HAVA expenditures before expenditures are made. The procedure requires that the request include a detailed description of the proposal, its estimated cost, and a justification of how the proposal relates to HAVA.
- **August 11, 2004**—To ensure consistency among the voter education outreach efforts, the office sent a memorandum to its regional offices outlining its expectations regarding several different outreach activities and asked that regional staff and consultants report on each of their activities weekly. The memorandum also outlined the minimum information that should be tracked.
- **September 1, 2004**—All regional directors were required to submit weekly reports of all their HAVA outreach activities, including the activities of the consultants working at the respective regional offices. Regional offices and consultants are to enter such outreach activities into a new reporting database.
- **September 14, 2004**—The office sent a memorandum to the regional directors instructing them to advise all HAVA consultants that documentation of their work in the form of staff activity reports, weekly reports, and reasonably detailed invoices that include tracking the tasks performed and how much time was spent on each task would be required before the consultants would be paid.
- **September 16, 2004**—The office sent regional directors a time sheet template that all HAVA contractors are to use when reporting how they spent their time.
- **September 17, 2004**—The office sent a memorandum to the regional directors establishing additional procedures to follow prior to contracting for services that require the expenditure of HAVA funds. These new procedures included the following:
 - Once a potential contractor is identified, the individual's application and resume, along with a completed HAVA expenditure request, contract request, and detailed scope of work will be forwarded to the executive office for approval, then to the management services division for processing.

- No person is to begin work before a contract that is consistent with state law and office practices is fully executed.

In late September 2004, the secretary of state directed that all HAVA consultants in field offices be given termination notices and confirmed that the office would soon hire an administrator specifically to oversee HAVA.

Because of continued problems with the management of HAVA activities, on September 23, 2004, the secretary of state sent a memorandum to the former undersecretary of state noting that many of the practices and procedures put into place over the past several months had not been fully abided by or enforced. He directed the former undersecretary to warn staff and contractors that failure to comply would be grounds for discipline up to and including termination for staff and termination of contracts for independent contractors. The secretary listed in his memorandum the procedures and practices he was concerned were not being followed, which included many of the measures previously listed and a few new directives. Among the new actions, the secretary directed that all HAVA consultants in field offices be given termination notices, that staff paid with HAVA funds have their job duties and pay reviewed and the HAVA share adjusted where appropriate, and that time charged by staff to HAVA be reviewed to ensure charges are proper. The secretary ended the memorandum by confirming that the office would soon hire an administrator specifically to oversee HAVA.

Later, on October 28, 2004, the secretary of state announced his appointment of experienced office staff to replace the former undersecretary, who was transferred, and the chief counsel, who had resigned earlier to take a job at another agency, and expressed his confidence that these individuals would help guide the office in positive directions in running a successful agency.

THE OFFICE USED QUESTIONABLE PRACTICES TO PROCURE GOODS AND SERVICES RELATED TO HAVA

The office bypassed competitive bidding for most HAVA expenditures by obtaining and then inappropriately using a Department of General Services (General Services) exemption from competitive bidding, by not following General Services' policies in making California Multiple Award Schedule (CMAS) procurements, and by not following state procurement policy regarding commodity purchases. CMAS is a procurement method that allows state agencies to avoid the administrative time and expense of the State's formal competitive bid process by purchasing goods and services under preestablished contracts awarded and maintained by General Services. As shown in

Table 4, between June 2003 and September 2004, the office entered into 77 contracts for services with a combined value of \$4.9 million in HAVA discretionary funds.

TABLE 4

**Procurement Method Used for HAVA Service Contracts
Between June 2003 and September 2004**

Procurement Method	Number of Contracts*	Total Amount
No-bid exemption†	46	\$1,546,000
California Multiple Award Schedule	12	2,394,000
Contracts with other governmental entities‡	5	586,000
Legal services‡	2	345,000
Contracts for services under \$5,000‡	11	17,000
Competitively bid	1	29,000
Totals	77	\$4,917,000

Source: The Office of the Secretary of State's list of HAVA contracts.

* Does not include commodity purchase orders.

† One no-bid contract, entered into in June 2003, included a no-bid justification separately approved by the Department of General Services. However, later amendments to the contract used the no-bid exemption.

‡ Statutorily exempt from competitive bidding.

The office used a General Services exemption from competitive bidding for 46 of those contracts, totaling over \$1.5 million. However, most of the contracts entered into under this exemption did not have the urgency described in the justification provided to General Services. Also, the office appears to have split purchase orders to avoid CMAS procurement limits and competitive bidding requirements. Further, for 10 of the 12 HAVA-expensed purchase orders it made using CMAS, the office did not follow recommended policy and obtain comparison quotes from other qualified vendors. In addition to the contracts discussed above, two of the three non-CMAS, commodity purchase orders in our sample that had been issued by the office and paid with HAVA funds did not follow state policies requiring informal bids. As a result of these practices, the State is less sure that the office obtained the best value for the purchases it made with HAVA funds. Moreover, in fiscal year 2004–05 the office entered into contracts and paid some consultants for voter outreach services although it did not have the spending authority to do so.

The Office Used an Exemption From Competitive Bidding for Reasons Other Than the One Described in Its Request

The office requested and received from General Services an exemption from competitive bidding on HAVA contracts. The justification it provided for this exemption was the urgent need to meet the deadlines set forth in HAVA. However, most of the contracts entered into under the no-bid exemption were for services that did not relate to any specific HAVA deadline and could have been competitively bid had the office planned better. The one-year no-bid exemption, effective September 1, 2003, through August 30, 2004, allowed the office to enter into a maximum of 50 no-bid contracts not to exceed a total of \$24.3 million. As Table 5 shows, the office used the no-bid exemption to hire consultants to perform voter outreach and registration, implement media campaigns, handle public relations, and monitor poll workers.

TABLE 5

Contracts Entered Into Under the Office of the Secretary of State's No-Bid Exemption

Description of Activities	Number of Contracts	Total Amount
Voter outreach, March and November 2004 elections	35	\$ 854,082
Media campaign, March 2004 election	5	500,000
Public relations	4	169,170
Poll worker monitoring, March and November 2004 elections	2	22,500
Totals	46	\$1,545,752

Source: The Office of the Secretary of State's list of HAVA contracts.

Most of the activities performed by these consultants were for regularly scheduled elections occurring in March and November 2004. An executive staff member in charge of special projects who had a hand in overseeing the office's HAVA activities indicated an urgent need to educate voters about the necessary identification for first-time registered voters, the use of provisional ballots, and the complaint process that HAVA required to be in place by January 1, 2004, justified a no-bid contract. However, as we discussed earlier, the office did not adequately ensure that its consultants were using their compensated time to educate voters about these issues. In fact, the office could not provide us with documentation, such as a

plan showing what activities these consultants were to complete by March 2004 or by any other specified deadline. The scope of work sections for the consultants' contracts were equally vague, generally requiring only that the consultant "perform voter and election outreach activities." Finally, the office did not establish any way to determine whether its consultants' efforts were successful.

According to the office, it believes that it adhered to state procurement processes. It sought and obtained an exemption approval from General Services to begin implementation of the HAVA requirements. The office believes it prioritized HAVA requirements, effectively working around a recall election and other office priorities.

The office continued to use the General Services exemption from competitive bidding for activities that it could have planned in advance and competitively bid.

However, the office's reason does not explain why it continued to use this exemption for contracts related to activities for the November 2004 election and beyond. Of the 46 contracts executed under the exemption, 27 (59 percent) had start dates occurring after the March 2004 election, with most ending in November or December 2004. It is also reasonable to presume that even in the absence of HAVA, the office would be planning various types of voter outreach well in advance of scheduled elections and would need only to add HAVA-related information to its scheduled campaigns.

The office's lack of planning may have been the reason that it used the no-bid procurement method for some contracts. For instance, as evidenced by the contract documents we reviewed, the office's \$500,000 media campaign for the March 2004 election was not put together until February 2004. It appears that this late start to the campaign, and not the requirement to meet a HAVA deadline, may have necessitated the use of the no-bid exemption. Because the office used the no-bid exemption rather than competitive bidding, the State has less assurance that it received the best value for its HAVA expenditures.

The Office Did Not Follow General Services Policies in Its Use of CMAS Contracts

The office appears to have split purchase orders to avoid CMAS procurement limits and competitive bidding requirements. State law authorizes state agencies to use multiple award schedules established by General Services as an alternative to using a formal competitive bid. However, the law says that General Services shall determine the delegated authority for agencies wishing to use multiple awards. In its January 2003

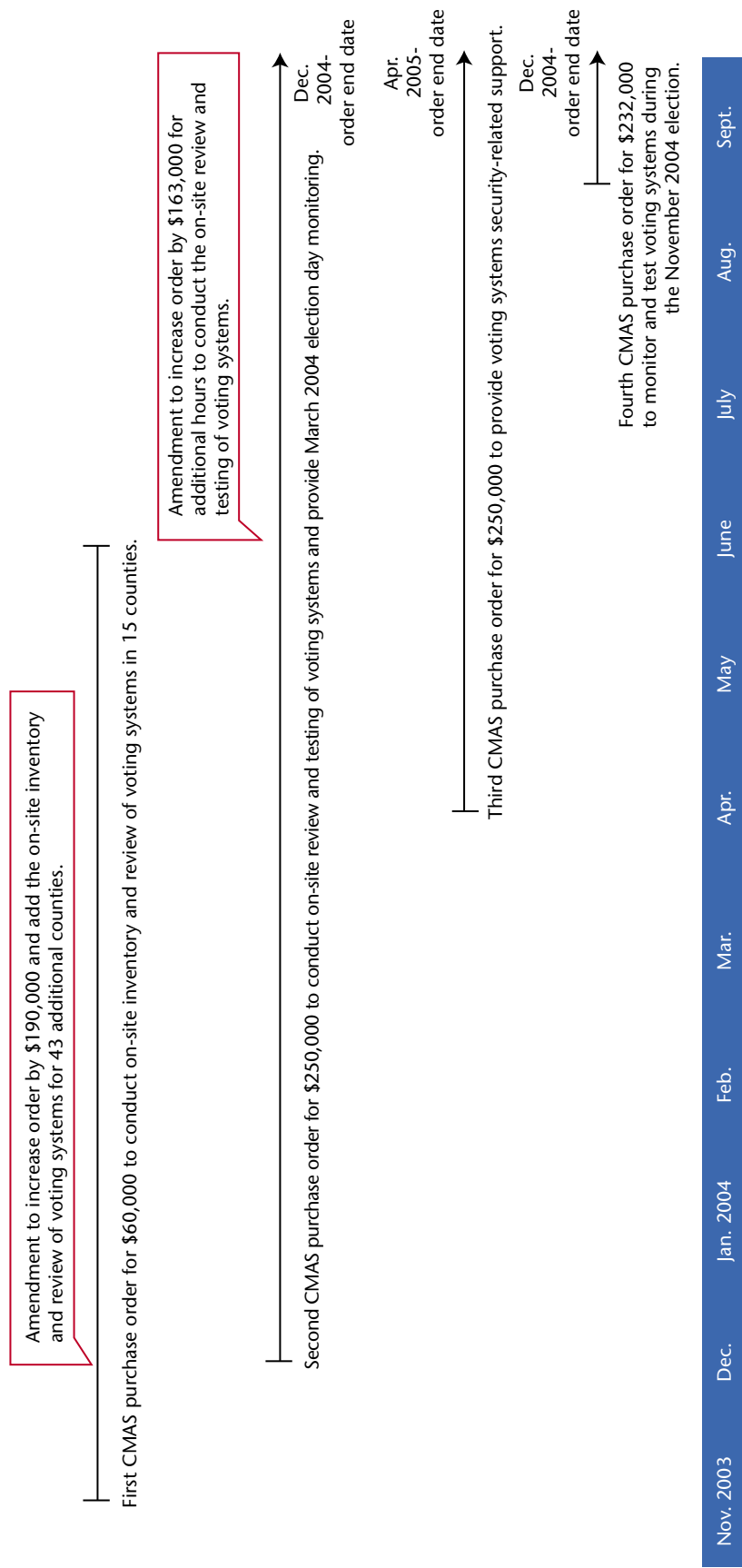
During a two-month period, the office used CMAS four times to procure consultant services from the same vendor and for the same project that in total exceeded the CMAS order limit, but could not satisfactorily explain why it used separate orders.

CMAS agency packet, General Services set the order limit at \$500,000 on all information technology (IT) purchases and requires that if the total of multiple purchase orders exceeds this limit, state agencies should document why the orders are separate. In June 2004, the office used CMAS to procure \$90,000 in IT consultant services from one vendor for its statewide voter registration project and in the next month used CMAS three more times to procure IT consulting services from the same vendor for the same project. The three subsequent CMAS purchase orders—for \$459,000, \$55,000, and \$27,000, respectively—totaled \$631,000, thus exceeding the General Services-imposed order limit. We found no documentation in the procurement file explaining why the orders were separate and not combined. The office's contracts officer explained that the orders were separate because the statements of work, term dates, and contract managers were different. However, we found that the statements of work for the purchase orders were not sufficiently different to warrant different contracts, and the fact that the consultants had different term dates of service and were reporting to different managers would not necessitate different orders.

The office also bypassed CMAS order limits by using multiple purchase orders to procure \$1,145,000 in IT consulting services from one vendor for its voting systems advisory project. As shown in the Figure on the following page, the office used four separate CMAS purchase orders and two amendments to inventory and review voting systems, provide security-related support, and conduct election day monitoring and testing.

According to the office, the four CMAS purchase orders related to its inventory, testing, and monitoring of voting systems should be considered as separate projects. It stated that the first purchase order was necessary to inventory county voting systems when it became aware that a voting system vendor had installed unauthorized software, which was used in at least one election. The office asserts that the second purchase order was to provide on-site evaluation of the voting system software and hardware that was used in selected counties on election day in March 2004 to ensure the use of certified voting systems. Further, it stated that the third purchase order was to hire a technical expert on election system security to analyze the software of these complex voting systems. Finally, it asserts that the fourth purchase order was to conduct parallel monitoring (tests of the voting system using simulated election day voting conditions) of voting systems during the November 2004 election to determine if the equipment had been manipulated or

Separate CMAS Purchase Orders for the Office’s Voting Systems Advisory Project



Source: The Office of the Secretary of State's CMAS purchase orders.

programmed to mis-report votes. Nevertheless, these purchase orders and amendments totaled more than \$1.1 million, exceeding the CMAS order limit; were all made to the same vendor for consultant services to inventory, test, and monitor related electronic voting systems; and were all executed in less than a one-year period—yet the office did not document why each purchase order was separate, as called for by General Services. When it uses CMAS to avoid competitive procurements on large projects such as these, the office cannot be sure it received the best value and that it acted in the best interests of the State.

Contrary to its own policy, the office did not obtain comparison quotes for 10 of the 12 HAVA-expensed CMAS purchase orders.

Moreover, despite its policy to follow the same practices General Services requires of other state agencies, the office did not obtain comparison quotes for 10 of the 12 HAVA-expensed CMAS purchase orders. As the entity that oversees the CMAS program, General Services is responsible for developing the program's policies and procedures. In May 2003, General Services issued a management memorandum requiring state agencies to solicit three price quotations for CMAS purchases over \$5,000. Although the memorandum explained that all constitutional officials, including the office, were exempt from the requirements it imposed, the office's policies state that it will go along with the spirit of the management memorandum and comply with its intent. Nevertheless, the office did not attempt to obtain any comparison quotes from qualified vendors for two of the three HAVA-expensed CMAS purchase orders we reviewed, and the office's contracts officer stated that she could only document that one of the other nine CMAS purchase orders had comparison quotes.

One of the purchase orders we reviewed for which the office did not obtain comparison quotes was for \$413,000 in consulting services for a voting systems project, and the other was for \$56,000 in translation services. The office's contracts officer explained that the office did not obtain comparative quotes because the executive office had already received and approved a proposal from the particular voting systems consultant selected for the contract and because there were no other qualified CMAS vendors in the region for the translation services required. However, in both cases, the office could have sought a no-bid exemption from General Services rather than using CMAS, and it could have found other qualified vendors had it wanted to obtain comparison quotes for these services. In fact, we found several CMAS vendors that could provide these services. Although the office is not specifically required to obtain

comparison quotes for its CMAS purchases, the experience of numerous state agencies has shown that when vendors must compete to win a contract, the State obtains better value in either price reductions or other concessions from the vendor.

The Office Did Not Follow State Procurement Policy in Its Purchase of Commodities Paid for With HAVA Funds

According to state procurement policy, for all commodity purchases over \$5,000, state agencies are required to obtain at least two informal bids. Of the three commodity purchases in our sample, two were for more than \$5,000, yet the office did not seek informal bids for either of them. The office purchased more than \$9,200 in poll worker brochures in January 2004 from one vendor and spent more than \$13,800 for “My Vote Counts” T-shirts, pens, and buttons in February 2004 from another vendor but did not seek bids before making those purchases. After the \$9,200 order was filled, the office noticed it did not obtain any informal bids from other vendors. It then obtained a lower bid from another vendor. However, by the time the office obtained the second bid, the goods had already been delivered.

Despite a state procurement requirement, the office did not seek informal bids for the two commodity purchases over \$5,000 in our sample.

The office’s procurement policy requires that the division ordering the commodities submit an approved purchase request form to the management services division, which then makes the purchase, obtaining informal bids when required. By ordering commodities directly instead of through the management services division, executive staff ignored this policy, and as a result, the office did not follow the rules associated with commodity purchases. By not adhering to procurement rules, the office failed to assure that it received the best value for its use of HAVA funds.

The Office Spent HAVA Funds on Activities for Which It Had No Spending Authority

The office bypassed the Legislature’s approval authority by inappropriately executing contracts and charging non-administrative expenditures to its fiscal year 2004–05 HAVA administration account. The office entered into 18 consultant contracts totaling \$230,400 beginning on or after July 1, 2004, and later paid consultants \$84,600 through these contracts for voter outreach activities. However, the Legislature had not approved such spending authority. Moreover, although the Legislature later granted the office authority to spend HAVA funds on certain activities, these activities did not include voter outreach.

Until early September 2004, the office had not received any authority from Finance and the Legislature to spend HAVA funds to pay for activities taking place in fiscal year 2004-05, except for the administrative costs relating to HAVA. The office described these administrative costs as consisting of the administrative overhead associated with managing all HAVA activities, such as accounting, centralized state costs, audits of related HAVA activities, and the cost of office staff assigned full-time to implement HAVA's requirements. On September 7, 2004, the Legislature authorized the office to spend \$15.2 million in fiscal year 2004-05 HAVA funds to pay for certain activities considered essential for the November 2, 2004, election. These approved uses, however, did not include voter outreach activities. Nevertheless, between July 1, 2004, and September 7, 2004, the office entered into 18 contracts for voter outreach consulting services having an aggregate value of \$230,400, when it had no legal authority to pay for these types of activities. In addition, for two of these contracts, a regional office had consultants start working at least one month before there was an executed contract for their services.

Although it had not received spending authority for such activities, the office paid \$84,600 to voter outreach consultants in fiscal year 2004-05 by inappropriately charging these activities to its HAVA administration account.

While deliberations over the office's fiscal year 2004-05 HAVA spending authority were taking place, the consultants that received fiscal year 2004-05 contracts to perform voter outreach had already begun work and subsequently submitted invoices for their services. To pay for these contractor invoices, the office used \$84,600 of its \$1.7 million HAVA administration account, which had been approved earlier through the regular fiscal year 2004-05 budget process. However, this was inconsistent with the office's past practice for paying for such activities. In fiscal year 2003-04, its accounting unit established a specific HAVA voter outreach accounting code to identify voter outreach costs as separate from administrative costs, and used this code when paying for voter outreach activities with HAVA funds. It was only after failing to receive spending authority for voter outreach activities that the office began charging these activities to the administration account.

On September 24, 2004, the office sent out a letter giving 30-day termination notice to all its voter outreach contract consultants. However, because it entered into contracts and allowed consultants to start work on activities for which it had not yet received spending authority, the office put itself in a position of having to decide whether not to pay consultants for services rendered in good faith or pay the consultants by bypassing the Legislature's authority over spending. Had it waited to enter into

these contracts until after it received the appropriate spending authority or at least advised its contractors that it would not allow them to start work until it had received such authority, the office could have avoided paying for these unauthorized contract costs that totaled \$84,600.

THE OFFICE UNNECESSARILY DELAYED GRANT PAYMENTS TO COUNTIES

The office failed to disburse HAVA funds for replacing voting machines within the time frames outlined in its grant application package, internal procedures, and contracts with counties, causing some to lose interest income they could have used to replace their voting equipment. HAVA provides states with grant funds to replace outdated punch card or lever-operated voting systems in qualifying voter precincts with new voting systems that meet HAVA requirements. The federal government allocated \$57.3 million of these funds to California, and the office determined how much each county would receive based on the number of qualifying voting precincts in each. Of the \$57.3 million allocated, the office disbursed \$34.4 million (60 percent) to qualifying counties as of June 30, 2004.

In a September 2003 application packet, the office notified counties of their allocated amounts, invited them to apply for these grant funds, and said that payment would occur approximately 30 days after a county received written confirmation from the office that its application had been approved and a contract had been executed. Correspondingly, the office's internal accounting procedures outlined the timeline for payment at approximately 30 days for application approval and 30 days for disbursement of funds, for a total of 60 days. Further, the office's contracts with the county recipients of the grant funds said that payment would be made in accordance with the California Prompt Payment Act, which requires state agencies to pay undisputed requests for payment on a contract within 45 days of receipt.

Despite the language contained in its application package, its procedures, and its contracts, the office disbursed these funds an average of 168 days after receiving the application, causing one county to submit a claim for lost interest income. One of the major reasons the office took so long to disburse the funds was that the executive office took an average of 56 days to approve applications, even though staff had already thoroughly examined and approved them. The timeline in the accounting

The office disbursed the voting machine replacement funds to counties an average of 168 days after receiving the application, or 108 days longer than the 60-day timeline outlined in its accounting procedures.

procedures for the grant funds indicates that it would take five business days to obtain this executive approval. A second major reason for the delay was that the office had the State Controller's Office send the county checks to its Sacramento headquarters, rather than to the counties directly, and the office then took an average of 45 days to disburse the checks to the counties. The accounting procedures relating to these grant funds state that this step would take three business days, but staff indicated that when they wrote the procedures they were not aware they would later need to obtain additional executive approval to mail the checks to the counties.

An official in the executive office explained that the office required the additional approval because it wanted to make sure no legal issues had arisen between the approval of the application and issuance of the check. This official stated that some checks were held for a period of time because concerns had arisen that the voting systems purchased by some counties would not comply with HAVA's accessibility requirements. The office held other checks because of a controversy surrounding the direct-recording electronic voting systems purchased by some counties, which the secretary of state decertified in April 2004 because of concerns over the security and programming accuracy of these systems and because the systems did not permit voters to independently verify the accuracy of their electronic vote. The official indicated that the office ultimately decided to release the checks based on assurances made by the counties that their systems would be compliant by January 1, 2006, the deadline imposed by HAVA. However, it should be noted that the office took more than 120 days to pay two counties that were not involved in any voting system controversy. Further, the assurances of HAVA compliance provided by the counties were included in their original application packets and were not obtained after the controversies over the voting systems arose. Therefore, it was not necessary to obtain additional assurance from the counties and should not have added any delay in disbursing the funds.

Because of delays in disbursement, Los Angeles County requested payment of approximately \$27,000 in interest that it asserted it could have earned had the office made timely payment on the contract.

Because of the delays in disbursement, in May 2004 Los Angeles County requested payment of \$27,000 in interest from the office under California's Prompt Payment Act; it asserted it could have earned and used this amount for replacing its voting equipment had the office made timely payment on the contract. The office denied the claim, saying that the Prompt Payment Act was not applicable, and although the county's counsel believes it has legal grounds for appeal, it declined to pursue the appeal at

the time. Other counties also report losing interest income. For example, according to the election division coordinator for its registrar of voters, Santa Clara County lost \$18,000 in interest income as a result of the office's late payment. If the office had disbursed the funds according to its guidelines, the State would not have been exposed to the risk of having claims for lost interest brought against it, and counties could have used the interest earnings on HAVA activities.

RECOMMENDATIONS

To ensure that it successfully implements the requirements called for in HAVA, the office should take the following steps:

- Develop a comprehensive implementation plan that includes all HAVA projects and activities.
- Designate the individuals responsible for coordinating and assuring the overall implementation of the plan.
- Identify and dedicate the resources necessary to carry out the plan and assign roles and responsibilities accordingly.
- Establish timelines and key milestones and monitor to ensure that planned HAVA activities and projects are completed when scheduled and that they meet expectations.

To establish or strengthen controls, comply with federal and state laws, and reduce the risk that HAVA funds are spent inappropriately, the office should take the following actions:

- Develop clear job descriptions for employees working on HAVA activities that include expectations regarding conflicts of interest, incompatible activities, and any other requirements important in administering federal funds.
- Establish and enforce a policy prohibiting partisan activities by employees and consultants hired by the office; periodic staff training and annual certification by all employees that they have read and will comply should be part of this policy.
- Standardize the language used in all consultant contracts to include provisions regarding conflicts of interest and incompatible activities, such as partisan activities.

- Ensure that time charged to HAVA or any other federal program is supported with appropriate documentation, including time sheets and certifications.
- When competition is not used to award contracts, establish a process to screen and hire consultants.
- Follow control procedures for the review and approval of contracts to ensure that contracts include a detailed description of the scope of work, specific services and work products, and performance measures.
- Require that contract managers monitor for the completion of contract services and work products prior to approving invoices for payment.
- Review invoices to assure that charges to be paid with HAVA funds are reasonable and allowable and conform to the terms of the contract.
- Follow competitive bidding requirements to award contracts and restrict the use of exemptions to those occasions that truly justify the need for them.
- Follow General Services policies when using CMAS for contracting needs.
- Comply with state policy for procuring commodities.
- Prohibit fiscal year 2004–05 expenditures for HAVA activities until it receives spending authority from Finance and the Legislature.
- Disburse federal HAVA funds to counties for voting machine replacement within the time frames set out in its grant application, procedures, and contracts.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE
State Auditor

Date: December 16, 2004

Staff: Doug Cordiner, CGFM, Audit Principal
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APPENDIX

Status of the Office of the Secretary of State's Planned Uses of Federal Help America Vote Act Funds

The Office of the Secretary of State (office) received federal Help America Vote Act (HAVA) funds to improve the administration of elections (discretionary funds) and to replace punch card and lever-operated voting machines (voting machine replacement funds). It also was awarded HAVA funds designated for achieving compliance with certain mandatory requirements, as well as funds to make polling places more accessible and provide information to individuals with disabilities.

In addition to the predesignated use of HAVA voting machine replacement funds to replace punch card or lever-operated voting machines in specified counties, the office identified five uses for the discretionary funds in its fiscal year 2003–04 Section 28 application. It also identified four uses of the funds for making polling places accessible to individuals with disabilities in its fiscal year 2004–05 Section 28 application. Further, the office listed its proposed uses of funds to meet HAVA's mandatory requirements in its September 2004 update to the state plan.

The office's planned use of these HAVA funds and the status of these plans as of November 2004 are shown in Table A on the following pages. As shown in the table and discussed in the report, the office has not made significant progress in implementing its proposed HAVA projects and may potentially miss important implementation milestones.

TABLE A

The Office of the Secretary of State's (Office) Planned Uses of Federal Help America Vote Act Funds

Planned Uses of Federal Help America Vote Act (HAVA) Funds	Proposed Budget*	HAVA Implementation Date	Estimated Start Date	Targeted Completion Date	Status as of November 2004 According to the Office	Status According to the State Auditor
Discretionary Funds						
<i>Elections Official and Poll Working Training</i>	\$ 4,400,000				Of the \$4.4 million that was approved in fiscal year 2003-04, the office spent \$1.1 million. This leaves a remaining balance of \$3.3 million.	
Elections official training and support	3,400,000	None specified	Sept. 2003	June 2006	With consultants and staff, the office provided local elections officials support on improved election administration and voter education with a permanent absentee voter education program. Approximately \$1.1 million was spent or encumbered during fiscal year 2003-04. (It may be appropriate to include this item in the "Election Support and Training" category below.) Additional HAVA funds will be used when spending authority is obtained.	Partially implemented
Technical assistance to elections officials	400,000	None specified	Sept. 2003	June 2006	This project was not implemented during fiscal year 2003-04 using HAVA funds. Technical assistance was and is being provided to election officials using the office's elections division resources. HAVA funds will be used when spending authority for those expenditures is obtained.	Yet to be implemented
Training materials for elections officials	100,000	None specified	Sept. 2003	June 2006	This project was not implemented during fiscal year 2003-04 using HAVA funds. Production of training materials is being provided to elections officials using the office's elections division resources. HAVA funds will be used when spending authority for those expenditures is obtained.	Yet to be implemented
Curriculum development for elections official training	500,000	None specified	Sept. 2003	June 2006	This project was not implemented during fiscal year 2003-04 using HAVA funds. HAVA funds will be used when spending authority for those expenditures is obtained.	Yet to be implemented
<i>Election Support and Training</i>	11,550,000				Of the \$11.55 million that was approved in fiscal year 2003-04, the office spent \$1.9 million. This leaves a remaining balance of \$9.65 million.	
Voter education and poll worker recruitment	9,700,000	None specified	Sept. 2003	June 2006	Used consultants, staff, and materials to educate voters, local elections officials, and poll workers regarding compliance with HAVA, including the identification rules with regard to certain voters who register by mail, provisional ballots, "free access," and the complaint procedure. Approximately \$1.9 million was spent or encumbered in this regard.	Partially implemented

* These proposed budget amounts come from the office's fiscal year 2003-04 Section 28 application for the discretionary funds and voting machine replacement funds, its September 2004 state plan update for the mandatory requirements funds, and its fiscal year 2004-05 Section 28 application for election assistance for individuals with disabilities funds. According to the office, it is refining these proposed budget estimates in its comprehensive spending plan that it submitted on December 2, 2004, to the Department of Finance, as required by provisions in the Budget Act of 2004.

Planned Uses of Federal Help America Vote Act (HAVA) Funds	Proposed Budget*	HAVA Implementation Date	Estimated Start Date	Targeted Completion Date	Status as of November 2004 According to the Office	Status According to the State Auditor
Minimum training standards	\$ 150,000	None specified	Sept. 2003	June 2006	This project was not implemented during fiscal year 2003–04 using HAVA funds. Minimum training standards for poll workers are being developed as required by California Elections Code, Section 12309.5, using the office's elections division resources. Further work in this regard will be funded by HAVA funds when spending authority for those expenditures is obtained.	Partially implemented
Poll worker training materials	1,700,000	None specified	Sept. 2003	June 2006	This project was not implemented during fiscal year 2003–04 using HAVA funds. Materials will be developed as part of the work of the task force established by California Elections Code, Section 12309.5, and will be funded by HAVA funds when spending authority for those expenditures is obtained.	Yet to be implemented
<i>Disability and Language Access</i>	3,550,000				Of the \$3.55 million that was approved in fiscal year 2003–04, the office spent \$200,000. This leaves a remaining balance of \$3.35 million.	
Best practices	200,000	None specified	Sept. 2003	June 2006	This project was not implemented during fiscal year 2003–04 using HAVA funds. The development of best practices is part of the work of the CA-Voting advisory committee that consists of county elections officials and community representatives. Further work in this regard will be funded by HAVA funds when spending authority for those expenditures is obtained.	Yet to be implemented
Voter materials	200,000	None specified	Sept. 2003	Mar. 2004	\$200,000 was spent during fiscal year 2003–04 on increasing production of the Easy Voter Guide for low literacy and alternative language voters, educating such voters about the process of voting.	Completed
Subcontracts	150,000	None specified	Sept. 2003	June 2006	This project was not implemented during fiscal year 2003–04 using HAVA funds. It may be implemented for fiscal year 2004–05 and/or fiscal year 2005–06 if spending authority for those expenditures is obtained.	Yet to be implemented
Install direct-recording electronic voting machines, one per polling place, at 750 precincts	3,000,000	None specified	Sept. 2003	Jan. 2006	This project was not implemented during fiscal year 2003–04 using HAVA funds. It will be part of the larger compliance effort with the requirement of having at least one accessible voting unit in every polling place by the first federal election after January 1, 2006.	Yet to be implemented
<i>Electoral System Mandates</i>	2,700,000				Of the \$2.7 million approved in fiscal year 2003–04, the office spent \$1.5 million. This leaves a remaining balance of \$1.2 million.	

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* Please see the footnote on page 50.

Planned Uses of Federal Help America Vote Act (HAVA) Funds	Proposed Budget*	HAVA Implementation Date	Estimated Start Date	Targeted Completion Date	Status as of November 2004 According to the Office	Status According to the State Auditor
Evaluation and study of electoral process	\$ 2,100,000	Various	Sept. 2003	June 2006	Funds were spent or encumbered during fiscal year 2003-04 to use consultants and staff needed to comply with the many requirements mandated by HAVA. These requirements include the establishment of a HAVA-compliant database, certification of voter registration information in conjunction with the new identification requirements for certain first-time voters who register by mail, voter and election official education, and poll worker training.	The response does not provide a clear status
Local technical assistance for creating a free access system for provisional voters	200,000	January 1, 2004	Jan. 2003	Aug. 2003	HAVA funds were not expended directly during fiscal year 2003-04 for this project, although it is expected that local jurisdictions may claim reimbursement for costs associated with implementation of free access during fiscal years 2003-04 and 2004-05. By redirecting existing resources, the project was substantially implemented for the March 2004 primary election and completely implemented for the November 2004 general election. The office provided guidelines to the counties in August 2003 and a memorandum to county elections officials in January 2004.	Partially implemented
Implementation of complaint procedure	200,000	January 1, 2004	Jan. 2003	June 2003	No HAVA funds were expended directly in fiscal year 2003-04 to implement the complaint procedure required by HAVA. The complaint procedure was implemented in June 2003, however, using primarily non-HAVA resources.	Completed
Overseas voting clearinghouse	100,000	January 1, 2004	Aug. 2003	Jan. 2004	No HAVA funds were expended directly in fiscal year 2003-04 to implement the clearinghouse project required by HAVA. By redirecting existing resources, the project was substantially implemented for the March 2004 primary election through the office's voter information hotline and completely implemented for the November 2004 general election with the assignment of a specific person to undertake implementation of the project. Additional effort is anticipated in this regard when spending authority is obtained for these expenditures.	Partially implemented
Voter registration compliance form for voters who register by mail	100,000	January 1, 2004	Jan. 2003	Mar. 2004	Funds were spent or encumbered in fiscal year 2003-04 to use consultants and staff needed to develop an interim verification of information regarding certain voters who register by mail.	The response does not provide a clear status
<i>Administrative Oversight and Implementation of HAVA</i>	5,000,000	None specified	Aug. 2003	June 2006	The office requested \$5 million for administration for fiscal years 2003-04 through 2005-06. Of this amount, \$1.7 million per year was approved for fiscal years 2003-04 and 2004-05.	Ongoing
Total Discretionary Funds	\$27,200,000					

* Please see the footnote on page 50.

Planned Uses of Federal Help America Vote Act (HAVA) Funds	Proposed Budget*	HAVA Implementation Date	Estimated Start Date	Targeted Completion Date	Status as of November 2004 According to the Office	Status According to the State Auditor
Voting Machine Replacement Funds						
<i>Replace punch card voting systems</i>	\$57,300,000	January 1, 2006†	June 2003	June 2005	The allocation of these funds to counties is in progress. Many counties have not yet applied for their allocation. The office has disbursed \$51.1 million as of September 2004 with respect to 16 counties. The remaining balance is \$6.2 million to be distributed to 14 counties upon receiving applications from the counties and spending authority as required by the Budget Act of 2004.	Partially implemented
Total Voting Machine Replacement Funds						
	\$57,300,000					
Mandatory Requirements Funds						
<i>Mandatory Requirements</i>						
Voting equipment modernization	42,577,718	January 1, 2006	January 2004	June 2005	\$290,000 was approved for fiscal year 2004-05 to enable the office to conduct election-day verification of the accuracy and security of electronic voting machines (parallel monitoring). Upon receiving the spending authority required by the Budget Act of 2004, the remaining money will be spent to facilitate compliance with the HAVA requirement that all voting systems have an accessible voter verified paper audit trail by the first federal election after January 1, 2006. A task force consisting of county elections officials and community representatives will assist in this process.	Yet to be implemented
Voting equipment accessibility for disabled and language minorities	32,500,125	January 1, 2006	January 2004	June 2005	Upon receiving the spending authority required by the Budget Act of 2004, HAVA funds will be spent to facilitate compliance with the HAVA requirement that all polling places in California have at least one direct-recording electronic or other accessible unit by the first federal election after January 1, 2006. A task force consisting of county elections officials and community representatives will assist in this process.	Yet to be implemented
Accessibility for language minorities	100,000	January 1, 2006	January 2004	June 2005	Voting systems are already required to meet the requirements of the federal Voting Rights Act. However, validation is required to ensure compliance. No HAVA funds have been spent to date on this project. Existing resources have been redirected to commence this project.	Yet to be implemented
Voting systems evaluation	300,000	January 1, 2006	January 2004	ongoing	This is an ongoing process. No HAVA funds have been spent to date on this project. Existing resources have been redirected to commence this project.	Yet to be implemented

* Please see the footnote on page 50.

† This effective date applies only to states that seek and are granted a waiver to extend HAVA's January 1, 2004, implementation date. California requested and received such a waiver.

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Planned Uses of Federal Help America Vote Act (HAVA) Funds	Proposed Budget*	HAVA Implementation Date	Estimated Start Date	Targeted Completion Date	Status as of November 2004 According to the Office	Status According to the State Auditor
Definition of a vote	\$ 200,000	January 1, 2006	Jan. 2005	ongoing	Most definitions are contained in the procedures that apply to certified voting systems. However, these determinations need to be validated and probably included in formally adopted regulations. No HAVA funds have been spent to date on this project. The project will commence when authority to spend HAVA funds is obtained.	Yet to be implemented
Provisional ballot regulations and guidelines	100,000	January 1, 2004	July 2003	Jan. 2004	No HAVA funds have been directly spent on this project. By redirecting existing resources, the office provided guidance on provisional ballots and a free access system to counties in August 2003 and sent a memorandum to county elections officials on January 21, 2004. Regulations are expected to be adopted as soon as HAVA spending authority is obtained for this purpose.	Partially implemented
Oversee the creation of a provisional ballot free access system	500,000	January 1, 2004	July 2003	Jan. 2004	No HAVA funds have been directly spent on this project. By redirecting existing resources, the office provided guidance on provisional ballots and a free access system to counties in August 2003 and sent a memorandum to county elections officials on January 21, 2004.	Partially implemented
Help to ensure the posting of all required HAVA information	200,000	January 1, 2004	Sept. 2003	Jan. 2004	The office communicated HAVA posting requirements and made posters available to counties that included the required information.	Completed
Statewide voter registration database	40,000,000	January 1, 2006†	Jan. 2003	Jan. 2006	As of October 2004, the proposed project completion date for the statewide registration database is January 1, 2006, with training for various users to be conducted during the first few months of 2006. The feasibility study report was submitted to the Department of Finance (Finance) for approval in October 2004.	Partially implemented
New registration forms	500,000	January 1, 2006	Jan. 2005	June 2005	These will be needed in time to be distributed by the January 1, 2006, effective date of the requirement. Spending authority will be needed before new forms can be printed and distributed. Staff are currently working on the format of the new forms.	Yet to be implemented
Soliciting and processing registration forms	500,000	January 1, 2006	Jan. 2005	June 2006	Procedures need to be in place by the effective date of HAVA, Section 301, requirements that commence January 1, 2006. The office will be working with the counties on developing such procedures. It is expected that the counties will have substantial costs in complying with this requirement for which they will be seeking reimbursement.	Yet to be implemented
Verification of information	2,000,000	January 1, 2006	Jan. 2005	Jan. 2006	Procedures need to be in place by the effective date of HAVA, Section 301, requirements that commence January 1, 2006. On this date, new registration affidavit information must be verified using the State's database. This will involve unknown but substantial costs to counties, the Department of Motor Vehicles, and the office.	Yet to be implemented

* Please see the footnote on page 50.

† Please see footnote on page 53.

Planned Uses of Federal Help America Vote Act (HAVA) Funds	Proposed Budget*	HAVA Implementation Date	Estimated Start Date	Targeted Completion Date	Status as of November 2004 According to the Office	Status According to the State Auditor
Regulations and guidelines for identification of certain voters	\$ 100,000	January 1, 2004	Jan. 2003	Jan. 2004	The office communicated to counties the guidelines for identifying voters who register by mail in August 2003 and sent a memorandum to county elections officials on January 21, 2004. The office announced an emergency regulation in January 2004 regarding the identification of voters who register by mail. This office is drafting a permanent regulation that will be announced when it obtains HAVA spending authority for HAVA-related regulations.	Partially implemented
Identification process for certain voters	1,000,000	January 1, 2004	Jan. 2003	Jan. 2004	The office announced an emergency regulation in January 2004 regarding the identification of certain voters. The counties are expected to claim reimbursement for costs associated with implementing the identification requirement procedures, although no claims have been submitted to date.	Partially implemented
Total Mandatory Requirements		\$120,577,843				
Other Activities						
Complaint procedures	300,000	January 1, 2004	Jan. 2003	June 2003	Administrative complaint procedures were adopted and posted on the office's Web site in June 2003.	Completed
Assistance in voting for overseas and absentee uniformed services voters	200,000	January 1, 2004	Aug. 2003	Jan. 2004	The office is the designated single office within the State and began responding to inquiries regarding military and overseas voting by January 1, 2004. An individual was specifically assigned as the program coordinator in June 2004. Efforts to proactively increase educational outreach efforts to military and overseas voters were unsuccessful when spending authority was denied.	Partially implemented
Controls for payment distribution	200,000	None specified	Jan. 2003	June 2003	This is included in the \$1.7 million appropriated for administrative costs. These funds will, therefore, be available for other HAVA purposes as indicated in the spending plan submitted to Finance as required by the Budget Act of 2004.	Not implemented
Voter education unit	3,900,000	None specified	Jan. 2003	June 2006	Planned efforts to enhance educational outreach were aborted because of the lack of spending authority. No HAVA funds have, therefore, been spent on this project. The proposed spending plan may reduce the allocation for this item.	Not implemented

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* Please see the footnote on page 50.

Planned Uses of Federal Help America Vote Act (HAVA) Funds	Proposed Budget*	HAVA Implementation Date	Estimated Start Date	Targeted Completion Date	Status as of November 2004 According to the Office	Status According to the State Auditor
County education programs	\$15,000,000	None specified	July 2004	June 2006	The office received spending authority of \$9.9 million as directed by the Budget Act of 2004. The office made grants to applying counties on a reimbursement basis for voter education and poll worker recruitment and training. It is unclear at this point whether the funds are attributed to HAVA, Section 101 or Section 251. The office assumes that the funds are attributed to HAVA, Section 101. The proposed spending plan submitted to Finance as required by the Budget Act of 2004 may reduce the allocation for this item.	Partially implemented
Elections official and poll worker education and training	25,000,000	None specified	July 2004	June 2006	Because of the lack of spending authority, no program was in place for the November 2004 election. No HAVA money was spent. The proposed spending plan may reduce the allocation for this item.	Yet to be implemented
Education outreach through print and electronic media	16,100,000	None specified	May 2004	June 2006	Because of the lack of spending authority, no program was in place for the November 2004 election. The proposed spending plan may reduce the allocation for this item. The office will seek HAVA funds spending authority with respect to future federal elections.	Yet to be implemented
Education and training grants	10,000,000	None specified	May 2004	June 2006	Because of the lack of spending authority, no program was in place for the November 2004 election. No HAVA money was spent. The proposed spending plan may reduce the allocation for this item. The office will seek HAVA funds spending authority with respect to future federal elections.	Yet to be implemented
Voting system certification and decertification	600,000	None specified	Apr. 2004	Dec. 2004	\$4.6 million was approved in fiscal year 2004-05 for reimbursement to counties for complying with the security measures directed by the office related to the recertification of electronic voting machines. The office presumed that the amount will be attributed to HAVA, Section 101 funds.	Partially implemented
Source code review	800,000	None specified	Sept. 2004	June 2006	Although spending authority in the amount of \$400,000 was approved in September for the November 2004 election, three solicitations of offers did not result in proposals that would allow for timely comprehensive source code review and analyses with respect to the November 2004 election. No HAVA money was spent. Although the program was suspended for the November 2004 election due to the lack of time, it will apply to future certifications of voting systems provided that HAVA spending authority for such expenditures is obtained.	Yet to be implemented

* Please see the footnote on page 50.

Planned Uses of Federal Help America Vote Act (HAVA) Funds	Proposed Budget*	HAVA Implementation Date	Estimated Start Date	Targeted Completion Date	Status as of November 2004 According to the Office	Status According to the State Auditor
Hearings of voting systems and procedures panel	\$ 200,000	None specified	Jan. 2005	June 2006	The spending plan submitted to Finance as required by the Budget Act of 2004 will propose to spend additional sums for hearings held by the voting systems and procedures panel during fiscal years 2004-05 and 2005-06, given the requirement that all direct-recording electronic voting machines must, under HAVA, have a paper trail. This is consistent with similar state legislation requiring that all direct recording electronic voting systems certified on or after January 1, 2005, have an accessible voter verified paper audit trail. The schedule for these meetings is being determined.	Yet to be implemented
Regulations to comply with HAVA, Section 301	200,000	January 1, 2006	Jan. 2004	June 2006	Several regulations to implement HAVA are currently in the development stage. The office is awaiting HAVA spending authority in order to proceed with these regulations.	Partially implemented
Fiscal and audit control processes	600,000	None specified	Jan. 2003	June 2006	This is included in the \$1.7 million appropriated for administrative costs discussed above with respect to HAVA, Section 101 funds. These funds will, therefore, be available for other HAVA purposes as indicated in the spending plan submitted to Finance as required by the Budget Act of 2004.	Not implemented
Fiscal and audit controls	3,400,000	None specified	Jan. 2003	June 2006	This is included in the \$1.7 million appropriated for administrative costs discussed above with respect to HAVA, Section 101 funds. These funds will, therefore, be available for other HAVA purposes as indicated in the spending plan submitted to Finance as required by the Budget Act of 2004.	Not implemented
Performance goals and measures	200,000	None specified	Jan. 2003	June 2004	This is included in the \$1.7 million appropriated for administrative costs discussed above with respect to HAVA, Section 101 funds. These funds will, therefore, be available for other HAVA purposes as indicated in the spending plan submitted to Finance as required by the Budget Act of 2004.	Not implemented
State plan management	300,000	None specified	Jan. 2003	June 2004	This is included in the \$1.7 million appropriated for administrative costs discussed above with respect to HAVA, Section 101 funds. These funds will, therefore, be available for other HAVA purposes as indicated in the spending plan submitted to Finance as required by the Budget Act of 2004.	Not implemented

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* Please see the footnote on page 50.

Planned Uses of Federal Help America Vote Act (HAVA) Funds	Proposed Budget*	HAVA Implementation Date	Estimated Start Date	Targeted Completion Date	Status as of November 2004 According to the Office	Status According to the State Auditor
Parallel monitoring	\$ 290,000	None specified	Jan. 2004	Dec. 2004	Using the spending authority received through Section 28 in fiscal year 2003–04 and the Budget Act of 2004 in fiscal year 2004–05, the office conducted parallel monitoring of direct-recording electronic voting systems in several counties at the March 2004 primary election and the November 2004 general election to determine whether the tested units recorded votes accurately. This project is complete. Future parallel monitoring will probably be unlikely because commencing in January 2006, all direct-recording electronic voting systems must have an accessible, voter-verified paper audit trail.	Completed
Poll monitoring	600,000	None specified	Jan. 2004	June 2006	The office implemented a poll monitoring program using HAVA, Section 101, funds for the March 2004 federal election to improve the administration of elections for federal office; to educate voters concerning voting procedures, voting rights, and voting technology; to train election officials, poll workers, and election volunteers; to improve voting systems and technology; and to improve accessibility. Poll monitoring was conducted for the March 2004 primary election using HAVA, Section 101, funds. A request for HAVA spending authority to conduct poll monitoring for the November 2004 general election was not approved. Assuming that HAVA spending authority is granted, the office plans to conduct poll monitoring for future federal elections.	Partially implemented
Total Other Activities	\$ 77,890,000					
<i>Prudent reserve</i>	66,059,281	None specified			According to the office, it is keeping 25 percent of the mandatory requirements funds in reserve.	Status not applicable
Total Mandatory Requirement Funds	\$264,527,124					
Election Assistance for Individuals With Disabilities Funds						
<i>Fiscal Year 2003–04 Grant Award</i>						
Polling place accessibility for individuals with disabilities	342,939	None specified	Sept. 2003	Dec. 2004	The project is in progress. The office has processed, through an advisory committee consisting of county elections officials and community representatives (CA-Voting), proposals solicited from county elections officials to receive and expend election assistance for individuals with disabilities (EAD) grants for the 2003 federal appropriation. The office is awaiting spending authority to make the actual grants to counties of HAVA funds that have been received by the State for this purpose. No HAVA funds have been spent pending the receipt of spending authority.	Partially implemented

* Please see the footnote on page 50.

Planned Uses of Federal Help America Vote Act (HAVA) Funds	Proposed Budget*	HAVA Implementation Date	Estimated Start Date	Targeted Completion Date	Status as of November 2004 According to the Office	Status According to the State Auditor
Access and participation opportunities	\$ 342,939	None specified	Sept. 2003	Dec. 2004	The project is in progress. The office has processed, through CA-Voting, proposals solicited from county elections officials to receive and expend EAID grants for the 2003 federal appropriation. The office is awaiting spending authority to make the grants to counties of HAVA funds that have been received by the State. No HAVA funds have been spent pending the receipt of spending authority.	Partially implemented
Elections official training on how to promote access	342,939	None specified	Sept. 2003	Dec. 2004	The project is in progress. The office has processed, through CA-Voting, proposals solicited from county elections officials to receive and expend EAID grants for the 2003 federal appropriation. The office is awaiting spending authority to make the grants to counties of HAVA funds that have been received by the State. No HAVA funds have been spent pending the receipt of spending authority.	Partially implemented
Information about the accessibility of polling places	342,939	None specified	Sept. 2003	Dec. 2004	This project is in progress. The office, through CA-Voting, has processed proposals solicited from county elections officials to receive and expend EAID grants for the 2003 federal appropriation. The office is awaiting spending authority to make the grants. No HAVA funds have been spent pending the receipt of spending authority.	Partially implemented
Total Fiscal Year 2003–04 Grant Award	\$ 1,371,756					
<i>Fiscal Year 2004–05 Grant Award</i>	985,955	None specified	Unknown	Unknown	The solicitation of proposals from counties for a second round of grants is awaiting receipt of HAVA spending authority for the Budget Act of 2004 funds. The plan is to continue with the grant process as outlined above for the first round, using CA-Voting to review and make recommendations to the office regarding EAID grants.	Yet to be implemented
Total Election Assistance for Individuals With Disabilities Funds	\$ 2,357,711					
Total HAVA Funds	\$351,384,835					

Sources: The planned uses come from the office's fiscal year 2003–04 Section 28 application, its September 2004 update to the state plan, and its fiscal year 2004–05 Section 28 application. The HAVA implementation dates come from the Help America Vote Act of 2002. The estimated start dates, targeted completion dates, and the November 2004 status come from the office.

* Please see the footnote on page 50.

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Agency's comments provided as text only.

Secretary of State
1500 11th Street
Sacramento, CA 95814

December 3, 2004

Elaine M. Howle*
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle,

Thank you for the opportunity to respond to the audit report regarding the implementation by the Office of the Secretary of State of the Help America Vote Act of 2002 (HAVA). We appreciate the Bureau of State Audit's (Bureau) report and recommendations and, in fact, discuss below our intentions to implement as soon as possible the recommendations not already implemented. At the end of this letter, we also clarify certain issues and dispel misimpressions that we believe need to be included to make this a more accurate report.

As the audit correctly indicates, this office was overburdened by a cyclone of unprecedented and historic forces:

- a combination of three elections -- a first-ever statewide recall election, a presidential primary, and a presidential general election;
- a nation-wide controversy over electronic voting that threatened to undermine public confidence in the equipment used to cast and count ballots; and
- the management of HAVA, a complex law with built-in ambiguities and little administrative guidance. This office historically has not administered federally funded programs.

Even with conflicting demands on our time and staff, we have been able to competently fulfill our core mission of supervising those elections during this period. In particular, this office and county elections officials received high marks for the efficient and professional manner in which the unprecedented recall election was conducted. So while we are disappointed that our administration of HAVA may not have been consistent with our performance in other areas, any mistakes that were made were certainly not intentional. We don't believe the audit report finds otherwise.

* California State Auditor's comments begin on page 69.

We continue to believe that the *sum total* of work performed – whether directed at increasing voting access for the disabled community, ensuring the accuracy and security of electronic voting machines, or providing voter education – can be fairly characterized as professional, solid work that the Secretary of State's office performed in the public interest.

We are now in the process of implementing many of your recommendations, in addition to the changes we have made at our own initiative over the past several months to ensure proper management and oversight of HAVA activities.

We have recently appointed a new upper-level management team. Each member of that team has extensive experience with state systems and procedures and the ability to administer effectively the office and its programs, particularly the HAVA program.

In addition, we are in the process of contracting with a respected management consulting firm to provide oversight of HAVA implementation activities. We are confident our new team, working in collaboration with the HAVA management contractor, will improve the program's effectiveness and productivity. We expect to award the HAVA management contract to a firm in December 2004.

With this audit report in hand, we will now take even more aggressive corrective action, including the implementation of all the audit's recommendations, as follows:

Bureau Recommendations: Develop a comprehensive implementation plan that includes all HAVA projects and activities; and Establish timelines and key milestones and monitor to ensure that planned HAVA activities and projects are completed when scheduled and meet expectations.

- The office has drafted a preliminary implementation plan that we are in the process of finalizing.
- On December 2, 2004, the office sent to the Department of Finance (DOF) its revised HAVA spending plan to provide details of the proposed distribution of HAVA funds for 2004-05 and 2005-06. This has been an iterative process and, as the Bureau notes, two versions of the plan have previously been sent to DOF for review. We consider the ongoing discourse with DOF to be an important part of the process.

Bureau Recommendations: Designate the individuals responsible for coordinating and assuring the overall implementation of the plan; and Identify and dedicate the resources necessary to carry out the plan and assign roles and responsibilities accordingly.

- A member of our HAVA staff has been clearly identified to manage the overall effort. That individual will be supported by the management consultant firm and will join a team consisting of managers responsible for the implementation of all HAVA requirements. This individual reports directly to the Undersecretary.

Bureau Recommendation: Develop clear job descriptions for employees working on HAVA activities that include expectations regarding conflicts of interest, incompatible activities, and any other requirements important in administering federal funds.

- We have communicated, verbally and in writing, the specific roles and responsibilities of staff and the importance of adhering to appropriate activity and timesheet reporting procedures. The final duty statements for staff will include a clear statement of conflicts of interest, incompatible activities, and other requirements, including those from the Hatch Act, that are important in administering federal funds.

Bureau Recommendation: Establish and enforce a policy prohibiting partisan activities by employees and consultants hired by the office. Periodic staff training and annual certification by all employees that they have read and will abide should be part of this policy.

- We are collecting model language that we can use to develop written rules prohibiting inappropriate partisan activities of employees, consultants and contractors.
- We will establish a program of periodic staff training and annual recertification to ensure ongoing compliance.

Bureau Recommendation: Standardize the language used in all consultant contracts to include provisions regarding conflicts of interest and incompatible activities, including partisan activities.

- The office has standardized the language used in all consultant contracts to include provisions regarding conflicts of interest and incompatible activities. It is now standard procedure for the office to include such language in all contracts.

Bureau Recommendation: Ensure that time charged to HAVA or any other federal program is supported with appropriate documentation, including time sheets and certifications.

- We have obtained and are adapting for our use the time sheets and procedures that are commonly used by other state agencies that receive federal funds, such as the Department of Transportation and the Department of Social Services.

Bureau Recommendation: When competition is not used to award contracts, establish a process to screen and hire consultants.

- We are developing and documenting a process to screen and hire consultants, which we anticipate putting into practice within the next few weeks. In the interim, we will continue to award non-competitively-bid contracts only if specifically approved by the Secretary of State and the Department of General Services. We believe that even if authorized by state procurement rules, non-competitively-bid contracts should be the rare exception.

Bureau Recommendation: Follow control procedures for the review and approval of contracts that include a detailed description of the scope of work, specific deliverables, and performance measures.

- We have established a more efficient contract review process, which requires any contractor to have a detailed scope of work, specific deliverables, and performance measures. These requirements are now standard practice at the Office of the Secretary of State.

Bureau Recommendation: Require that contract managers monitor for the completion of contract deliverables prior to approving invoices for payment.

- The office has reminded its managers of the need to ensure the completion of contract deliverables prior to approving invoices for payment and is writing detailed procedures for invoice approval.

Bureau Recommendation: Review invoices to assure that charges to be paid with HAVA funds are reasonable and allowable and conform to the terms of the contract.

- We have implemented a system whereby a manager from our Management Services Division reviews contractors' deliverables and matches them against the contractors' contracts. If obligations are not met, no HAVA funds will be disbursed. The new management consultant will have a role in this oversight as well.

Bureau Recommendation: Use competitive bidding requirements to award contracts and restrict the use of exemptions from competitive bidding to those occasions that truly justify the need for an exemption.

- We will restrict the use of exemptions from competitive bidding to those occasions that truly justify the need.

Bureau Recommendations: Follow General Services policies when using CMAS for contracting needs; and Comply with state policy for procuring commodities.

- We will comply fully with applicable state procurement policies.

Bureau Recommendation: Prohibit fiscal year 2004-05 expenditures for HAVA activities until it receives spending authority from the Department of Finance and the Legislature.

- We will make sure that 2004-2005 funds are not expended or encumbered without the appropriate spending authority.

Bureau Recommendation: Disburse HAVA funds to counties for voting machine replacement within the timeframes set out in its grant application, procedures, and contracts.

- We currently do not have spending authority to disburse these HAVA funds. When we do, we will disburse the funds expeditiously within the timeframes set out in the grant application, procedures, and contracts to eligible counties who have applied for voting machine replacement funds.

PROGRESS IMPLEMENTING HAVA

The Bureau's report provides significant detail of the HAVA program from May 2004 to October 2004. However, the Office of the Secretary of State has been working on the planning and implementation of HAVA for nearly 24 months. In that time, we have made significant progress in implementing HAVA requirements, including:

- The Secretary of State, in consultation with county elections officials, has allocated and distributed \$51.1 million to counties for replacement of punch-card voting machines. This is in addition to the approximately \$59 million that counties have already received for voting machine modernization as a result of the passage of Proposition 41. The Secretary of State has also allocated \$9.9 million to counties for voter education and poll worker training and \$4.6 million to counties to enhance the security of electronic voting machines.
- The office, in consultation with county elections officials, has developed a Provisional Ballot and Free Access Program, which provides all California voters with the right to cast provisional ballots and a method to determine whether the ballots were counted.
- The office has established an information clearinghouse for military and overseas voters.
- We revised voter registration forms to be consistent with HAVA requirements and these forms have been distributed to 58 California counties.
- The office has developed and implemented the nation's first "parallel monitoring" program to help ensure accuracy and security of electronic voting machines.
- Working with the county elections officials, we have successfully developed and implemented a posting program to inform voters of their rights.
- The office has developed a program for implementing HAVA's identification requirements for certain first-time voters who register to vote by mail. The office developed and implemented an interim system to verify information regarding voters who would otherwise have to present identification in order to vote.
- The office has developed and implemented an administrative complaint procedure.

With respect to implementing HAVA, much has been accomplished, but much remains to be done in order to meet various January 1, 2006, deadlines. We are committed to working with county elections officials, the Election Assistance Commission, the Governor, the Legislature, and other organizations and individuals to make California's implementation of HAVA a model for the nation.

We look forward to continuing the positive working relationship with the Bureau that has been established through this audit effort. We invite the Bureau to work closely with us as we strive to complete an exemplary HAVA program.

Sincerely,

(Signed by: Kevin Shelley)

KEVIN SHELLEY
Secretary of State

(Signed by: Cathy Mitchell)

CATHY MITCHELL
Undersecretary of State

Clarifications

1. *The audit report states that the Secretary of State failed to provide funding or guidance to train poll workers or elections officials.*

Actually, the Secretary of State, in consultation with the President of the California Association of Clerks and Elections Officials (CACEO), developed a program to provide counties with \$9.9 million in funding for voter education and poll-worker training. The program was approved by the Legislature and the Department of Finance on September 7, 2004.

2. *The audit report states the Secretary of State could have been more proactive in assisting counties with implementing such things as provisional voting procedures and a free access system by January 1, 2004, indicating that the office did not provide guidelines until January 21, 2004.*

Actually, the Secretary of State provided written guidelines on August 12, 2003, in addition to frequent follow-up verbal advice and a memorandum on January 21, 2004, as noted later in the audit on page 3 of Table A.1.

3. *The audit report states that the Secretary of State's office appears to have split purchase orders to avoid CMAS procurement limits and competitive bidding requirements for information technology services.*

Actually, the contracts for information technology services on voting systems were to address needs from related but completely separate purposes that quickly arose from emergencies that could not have been predicted – emergencies with the potential of compromising the public's confidence in equipment used to cast and count ballots. At the time these separate contracts for information technology services relating to voting systems were initiated, our intent was only to address a series of serious problems as they emerged – and not to avoid CMAS procurement procedures.

4. *The audit report states that Renne & Holtzman Public Law Group, LLP over-charged the state pursuant to its contract.*

Actually, we believe that the audit report finding was based on contract language superseded by an amended contract designed to reflect the original intent of the contract. We do not believe that the law firm over-charged the state for the critical legal services it provided. However, if it is determined that the law firm did over-charge the state, an appropriate offset will be made with respect to amounts invoiced but not yet paid.

5. *The report suggests in many locations that this agency was not proactive in communicating with county elections officials.*

For the record:

There are nearly 25,000 precincts and 100,000 poll workers in a California election. The state's role is to provide guidance to county elections officials regarding implementation of HAVA requirements. Evidence that we took this charge seriously is demonstrated by the following:

Between January 2003 and mid-October 2004, Elections Division staff:

- Attended at least nine HAVA-related meetings and participated in sub-committee meetings with county elections officials relating to implementation of HAVA, statewide voter registration database, provisional voting, identification requirements for first-time mail registrants, and free access to determine if one's provisional ballot was counted;
- Participated in discussions on HAVA implementation at the December 2002 and December 2003 annual new law workshops hosted by the California Association of County Elections Officials (CACEO);
- Visited three other states to study their statewide voter registration database systems;
- Mailed a dozen county election official memos (known as CC/ROV's) on topics related to HAVA, including collecting ID requirements, provisional ballots, HAVA's posting requirements for information at the polls, and driver's license/voter rolls interface;
- Conducted five public hearings throughout the state to develop, with county elections officials' input, California's State Plan;
- Adopted regulations relating to the ID requirements for specified first-time, mail-registrant voters;
- Created a web site with FAQ's for county elections officials and voters to use to obtain information about free access programs, ID requirements, provisional voting, military and overseas voting, and links to other resources and laws;
- Developed the driver's license validator system for interface with the CalVoter registration database; and
- Disseminated guidelines for implementing provisional voting.

6. *The audit report states that the office spent HAVA funds on activities for which it had no spending authority.*

Actually, the office had no intention of avoiding any obligation to obtain spending authority from the Department of Finance and the Legislature before expending HAVA funds. The Budget Act of 2004 appropriates \$1.7 million to the Secretary of State's office from the Federal Trust Fund for "operational costs" associated with implementation of HAVA. Based on this language, and discussions which occurred when the language was inserted into the Budget Act of 2004, the office believed "operational costs" to include any activity authorized by HAVA and contracted accordingly, but recognized that there was an aggregate cap of \$1.7 million for 2004-05. If it is determined that "operational costs" should be more narrowly construed to mean "administrative costs," the office will do so.

COMMENTS

California State Auditor's Comments on the Response From the Office of the Secretary of State

To provide clarity and perspective, we are commenting on the response to our audit report from the Office of the Secretary of State (office). The numbers correspond with the numbers we have placed in the office's response.

- Based on the evidence reviewed and the tests performed, we believe all the issues discussed in the report are accurate and meet audit standards.
- The office is mistaken. As stated on page 12 in the scope and methodology section of the report, to determine whether the office used Help America Vote Act of 2002 (HAVA) funds only for allowable purposes and in accordance with Section 28 of the Budget Act of 2003, we selected and tested a sample of expenditure transactions that the office paid in fiscal year 2003–04. We also reviewed certain transactions from fiscal year 2004–05.
- This statement is somewhat misleading. Although the office may have allocated \$9.9 million to the counties for voter education and poll worker training, as we state on page 18, as of November 22, 2004, these funds had not been disbursed to the counties.
- We amended page 18 of our report to reflect that the office provided guidelines in August 2003. However, these guidelines, a letter to the president of the California Association of Clerks and Election Officials (association), which was also sent to all county elections officials, only affirmed the association's interpretation of two sections of HAVA and listed the minimum standards for a free access system for voters. This amendment to our report does not change our conclusion on page 18 that, although the office took various steps to ensure local elections officials complied with the requirements that were to take effect on January 1, 2004, most occurred too late to be of assistance and others had not yet occurred, such as the county education and training grants that had not been disbursed to counties as of November 22, 2004.

- Regardless of its intent, the Department of General Services requires that the office document why each California Multiple Award Schedule (CMAS) purchase order is separate which, as we state on page 41, it did not do. Moreover, the four CMAS purchase orders—all to the same vendor for the same voting systems project—totaled more than \$1.1 million, exceeding the CMAS limit.
- The office is mistaken. Although the amendment did change the provisions that were violated in the initial contract, the amended provisions would only affect services rendered subsequent to the execution of the amendment on July 12, 2004. As we state on pages 32 and 33, the invoice billing for services that violated the original contract's terms covered the period from November 17, 2003, through April 7, 2004, three months before the contract amendment was executed.
- The office has yet to issue comprehensive guidelines to the local elections officials to ensure the consistent and appropriate implementation of all HAVA requirements.
- It is odd the office would hold such a belief. The description of what makes up the administrative costs that we include on page 43 was taken from information the Department of Finance (Finance) summarized from a plan submitted by the office. Moreover, this same information appeared in a letter Finance sent to the Legislature and copied to the former assistant secretary of state.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press

Office of the Secretary of State

Help America Vote Act of 2002

Presentation by

Elaine M. Howle
California State Auditor

January 10, 2005

This presentation document is only intended to outline selected portions of the report. For a more complete explanation of the points outlined in this document, please refer to the report.

Report 2004-139 Office of the Secretary of State:
Clear and Appropriate Direction Is Lacking in Its Implementation
of the Federal Help America Vote Act (December 2004)

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AUDIT BACKGROUND AND SCOPE

BACKGROUND

- Help America Vote Act (HAVA) passed in October 2002. HAVA is intended to make federal elections fairer and more accurate by addressing concerns over incomplete voter registration lists, inaccurate voting machines, and inefficient election administration.
- HAVA contains numerous requirements that every state must meet, most of which are to take effect between January 1, 2004, and January 1, 2006.
- Requirements include replacing punch card and lever-operated voting machines, allowing voters to verify their votes before casting their ballots, providing voters with provisional ballots, providing access for voters with disabilities, and creating a statewide voter registration list.
- In fiscal year 2003–04, California received a total of \$180.6 million in federal HAVA funds, and it expects to receive another \$169.6 million in fiscal year 2004–05.
- As of June 30, 2004, the office had spent only \$46.6 million of the \$81.2 million in HAVA funds authorized by the Legislature for fiscal year 2003–04.

TABLE 3

**HAVA Funds Awarded, Authorized, Spent or Obligated, and Unspent or Unobligated as of June 30, 2004
(In Millions)**

HAVA Funds	Federal HAVA Funds Awarded	Authorized Spending Amount	Amount Spent or Obligated	Amount Awarded but Unspent and Unobligated
Discretionary funds	\$ 27.3	\$23.9	\$ 6.9	\$ 20.4
Voting machine replacement funds	57.3	57.3	39.7	17.6
Mandatory requirements funds	94.6	0.0	0.0	94.6
Funds to provide access for individuals with disabilities	1.4	0.0	0.0	1.4
Totals	\$180.6	\$81.2	\$46.6	\$134.0

Source: Federal award documents and Office of the Secretary of State budget and accounting records.

Both federal and state laws generally prohibit the use of public funds for partisan political activities for the purpose of affecting the outcome of a campaign.

The use of federal funds to support partisan political activities is addressed by the Hatch Act. The Hatch Act prohibits federally funded employees, including state employees who work primarily on federal programs, from engaging in partisan political activity for the purpose of interfering with or affecting the results of an election or nomination for office.

Similarly, under California law the general rule is that state funds may not be used for those purposes. In addition, other federal regulations establish principles and provide guidance for determining whether various costs are allowable and how they are to be charged to federal programs.

SCOPE

- Review the office's fiscal year 2003–04 budget request and verify that all components of the HAVA grants were implemented within the spirit and letter of the law.
- Determine whether the office used HAVA funds only for allowable purposes and in accordance with Section 28 of the Budget Act of 2003.
- Determine whether the office implemented HAVA in compliance with federal requirements.
- Review and evaluate the office's process of awarding and disbursing HAVA funds and determine whether it effectively oversees the use of the funds it awards to ensure that recipients use them only for allowable purposes. ■

AUDIT HIGHLIGHTS

- ☑ The Office of the Secretary of State's (office) insufficient planning and poor management practices hampered its efforts to implement the Help America Vote Act (HAVA) provisions promptly.
- ☑ The office's disregard for proper controls and its poor oversight of staff and consultants led to questionable uses of HAVA funds.
- ☑ The office avoided competitive bidding for many HAVA purchases paid with HAVA funds by improperly using a Department of General Services exemption from competitive bidding and by not following the State's procurement policies.
- ☑ The office bypassed the Legislature's spending approval authority when it executed consultant contracts and then charged the associated costs to its HAVA administration account.
- ☑ The office failed to disburse HAVA funds to counties for the replacement of outdated voting machines within the time frames outlined in its grant application package and county agreements.
- ☑ The State's chief elections office lacks a policy that strictly prohibits partisan activities. ■

AUDIT RESULTS

The Office's Lack of Planning Is Delaying Its Implementation of Some HAVA Requirements

The office may not implement by January 1, 2006, a computerized statewide voter registration list that is maintained and administered at the state level.

The final phase of the project, which provides training to office staff and county elections staff, is not expected to be complete until June 30, 2006, six months after the deadline.

The office could have been more proactive in assisting counties in achieving successful statewide implementation of other Help America Vote Act (HAVA) requirements.

In June 2004, the U.S. Department of Justice (Justice) reported that in its monitoring of California's March 2, 2004, primary election, it observed numerous instances of noncompliance with HAVA requirements at several local election polling locations.

Justice attributed such noncompliance to a lack of adequate training of elections officials and poll workers about the new HAVA requirements.

Justice asked the office to provide a description of the steps it had taken to provide information and resources to counties to ensure proper instruction and implementation of HAVA's terms and what further steps it was prepared to take to make full compliance with HAVA a reality statewide.

The secretary of state responded to Justice in July 2004, and listed actions the office planned to take, such as working with elections officials to educate and train poll workers and officials through making grants available for that purpose. Although it took some steps to ensure compliance with requirements, most occurred too late to be of assistance or had not yet occurred.

In August 2003, the office received authority to spend \$4.4 million to train local poll workers and elections officials in meeting HAVA's requirements, but as of September 23, 2004, had yet to allocate these funds to counties.

Shortcomings in meeting HAVA deadlines can be traced to the office's incomplete planning for each of the activities it intended to undertake.

The state plan neglected to include implementation plans for any of its planned activities.

Although required by HAVA, the state plan did not detail the goals and objectives or the measures it would use to gauge whether planned activities were successful, the milestones for tracking progress, and the individuals assigned to be responsible for ensuring that each goal and objective is met.

The Office Has Not Used All the HAVA Funds It Was Authorized to Spend

Although it received authorization to spend \$81.2 million in federal HAVA funds in fiscal year 2003–04, as of June 30, 2004, it had spent or obligated only \$6.9 million in discretionary funds earmarked for improving the administration of federal elections and \$39.7 million for voting machine replacement.

According to executive staff, all the spending did not occur because of uncertainty about the cost of complying with various mandatory components of HAVA.

Executive staff stated that the October 2003 special election, the March 2004 primary election, and the controversy over the problems with certain electronic voting equipment consumed office resources.

As of the end of October 2004, the office had not spent any of the \$94.6 million in federal funds that California received in June 2004 for achieving compliance with HAVA's mandatory requirements.

HAVA became law in October 2002, and as of August 2003 the office had the authority to spend HAVA funds. Had the office implemented some of the proposed projects outlined in the Section 28 application, it could have been in a better position to assist counties in meeting the requirements by January 1, 2004.

The office could have chosen to use some discretionary funds to hire consultants to help in developing the detailed plans needed to implement proposed projects.

In its response to our audit report, the office stated that it had provided a detailed spending plan to the Department of Finance on December 2, 2004.

The Responsibilities for Administering the Activities Required by HAVA Are Not Clearly Assigned

The office did not assign anyone the overall responsibility for implementing the HAVA requirements. Instead, direction for administering HAVA activities came from many staff in the executive office.

Executive office staff requested contracts for HAVA consultants but did not complete the normal contract request paperwork that would have required them to justify in detail the work to be performed.

Executive office staff also frequently directed the accounting office staff to expedite payments to HAVA consultants.

No one performed the management tasks of specifying who would manage each project, defining the scope of each project, estimating the duration of project activities, assigning the activities and creating a project schedule, determining resource needs and costs, and developing a project implementation plan.

The California Association of Clerks and Elections Officials (association) in late December 2003 wrote to the office complaining about the lack of communication regarding guidelines for implementing HAVA provisions and its funding allocation decisions.

An association member also expressed frustration that the office did not provide clear reasons for its delay in disbursing HAVA voting machine replacement funds.

The office also had problems when it communicated with the association that it wanted feedback regarding the feasibility study report for the statewide voter registration database one week before the November 2, 2004, election.

The office eventually recognized its need for project management services to successfully implement HAVA and gave notice of its intent to award a contract for such services on December 1, 2004.

The State's Chief Elections Office Lacks a Policy That Strictly Prohibits Partisan Activities

Neither the office's conflict-of-interest code nor its statement of incompatible activities specifically prohibits office employees or its consultants from participating, or appearing to participate, in partisan activities.

Although the office includes provisions regarding incompatible activities and potential conflicts in some of its consultant contracts, its practice is inconsistent. As a result, the office cannot be sure that all consultants will know not to use public resources to participate in partisan activities that are prohibited by state laws or to advise the office when they encounter a potential conflict of interest.

The Office Did Not Provide Job Descriptions to Employees Working on HAVA Activities

The office did not provide many employees with job descriptions that explained their responsibilities.

Five of seven employees we interviewed indicated that they never received a job description covering their HAVA duties.

Without job descriptions that explain employee roles and responsibilities, the office cannot be sure that employees adequately perform those activities and comply with HAVA and other legal requirements.

THE OFFICE'S POOR ADMINISTRATION OF HAVA LED TO QUESTIONED COSTS

The Executive Office Did Not Follow Many Established Control Processes in Its Administration of the HAVA Program

Executive staff overrode internal controls. For example, although in fiscal year 2002–03 it required time sheets to support time spent working on HAVA activities, for fiscal year 2003–04 it discontinued the use of these time sheets.

Executive staff did not always follow its process when requesting contracts. Because many HAVA contract requests came directly from the executive office, established controls for the independent review and approval of these requests by other offices were frequently bypassed.

As such, many of these contracts were not justified as to their relationship to HAVA. No explanation was provided on how the scope of the contract related to HAVA, nor was there a process established for selecting the consultants who received the contracts.

The Office Could Not Support the Personal Service Costs It Charged to HAVA

To support the amount of salaries and wages charged to a federal fund source, federal cost principles require certifications be prepared at least semiannually for all those employees who work full-time on a single federal award.

Federal cost principles also require that the allocation of all salaries or wages for employees who work less than full-time on a single federal award be supported by monthly personnel activity reports or equivalent documentation, such as monthly time sheets.

The office neither prepared the required certifications for its employees who worked full-time on HAVA activities nor instructed its employees who worked part-time on HAVA activities to complete monthly time sheets or other personnel activity reports to support the \$1,025,695 in personal service costs charged to HAVA funds in fiscal year 2003–04.

Of the five full-time employees we reviewed whose entire salaries the office charged to HAVA in fiscal year 2003–04, two submitted staff activity reports for attending certain events that did not appear related to HAVA.

One reported that she attended events such as a legislator’s reception to “spread the word” about the office, a governor’s rally to get a sense of the governor’s message, and a unity luncheon to network and represent the office.

Another employee’s staff activity reports indicate that he attended events such as an annual holiday mixer and a celebration of Canada Day, attended an equality awards dinner, and marched in a national night out to demonstrate unity against neighborhood crime.

In our review of these and many other staff activity reports submitted, we found no indication of how these events related to allowable HAVA activities.

The Office’s Poor Oversight of HAVA Consultants Also Resulted in Its Questionable Use of HAVA Funds

In many instances, costs the office charged to HAVA funds were for activities that do not appear to relate to HAVA activities, and thus we question the use of federal funds to pay for them.

Of the 169 staff activity reports submitted between December 3, 2003, and September 5, 2004, by the regional outreach consultants hired by the office, 62 (37 percent) listed one or more activities that had no relationship to HAVA requirements.

Some of these consultants reported attending events such as fundraisers and a state delegation meeting for the Democratic National Convention, and indicated they were representing the secretary of state at these events.

Some of these activities appear partisan in nature. The federal Hatch Act generally prohibits state employees whose primary responsibilities are funded with federal funds from participating in partisan activities for the purpose of affecting the outcome of an election or nomination for office, and state law places similar restriction on the use of public resources for partisan political activities.

Although the application of the Hatch Act to consultants is unclear, permitting contractors to engage in partisan activities as part of their work on a federal program certainly violates the spirit of those laws. Further, state law makes it unlawful for a consultant to use public resources for partisan activities.

We could not quantify the amounts paid to consultants for attending these types of events because until mid-September 2004, the office did not require contractors to indicate on their invoices the activities they were billing for or how much time they spent on each activity.

The Office Does Not Adequately Administer Its Consultant Contracts

The office exercised poor oversight of a law firm's contract, approving and paying almost \$70,000 for invoiced services that violate the terms of the contract.

The contract states that the daily charges would not exceed \$1,200 per day; however, we identified 17 separate days on which the amount charged exceeded the limit.

Also, rather than providing services one day a week as called for in the contract, the firm billed the office for 22 days in January, 21 days in February, 23 days in March, and five days in the first two weeks of April 2004.

The office also paid for services rendered in November 2003—before a binding contract was in place.

The Office Has Taken Some Steps to Improve Its Administration of HAVA Funds

The office attempted to implement some measures to improve its management of HAVA funds between mid-May and mid-September 2004 but was forced to take even stronger actions, including terminating all existing contracts with HAVA regional outreach consultants.

May 14, 2004	Instituted a procedure requiring fiscal review and approval for proposed HAVA expenditures.
August 11, 2004	Sent a memorandum to regional offices outlining expectations regarding several outreach activities and asked for weekly activity reports.
September 1, 2004	Regional directors required to submit weekly reports of all their HAVA outreach activities.
September 14, 2004	Instructed regional directors to advise HAVA consultants that documentation of the activities performed and the time spent on each task would be required before payments would be made.
September 16, 2004	Sent a time sheet template to regional directors for HAVA contractors to use.
September 17, 2004	Established additional procedures to follow prior to contracting for services that require expenditure of HAVA funds.
September 23, 2004	Secretary of state directed that all HAVA consultants in field offices be given termination notices.

On October 28, 2004, the secretary of state announced his appointment of experienced office staff to replace the former undersecretary, who was transferred, and the chief counsel, who had resigned earlier to take a job at another agency.

THE OFFICE USED QUESTIONABLE PRACTICES TO PROCURE GOODS AND SERVICES RELATED TO HAVA

The office bypassed competitive bidding for most HAVA expenditures by obtaining and then inappropriately using a Department of General Services (General Services) exemption from competitive bidding.

As shown in Table 4, the office awarded 77 contracts totaling \$4.9 million, only one for \$29,000 was competitively bid, while 46 contracts totaling \$1.5 million were awarded using the General Services exemption.

TABLE 4

**Procurement Method Used for HAVA Service Contracts
Between June 2003 and September 2004**

Procurement Method	Number of Contracts*	Total Amount
No-bid exemption†	46	\$1,546,000
California Multiple Award Schedule	12	2,394,000
Contracts with other governmental entities‡	5	586,000
Legal services‡	2	345,000
Contracts for services under \$5,000‡	11	17,000
Competitively bid	1	29,000
Totals	77	\$4,917,000

Source: The Office of the Secretary of State's list of HAVA contracts.

* Does not include commodity purchase orders.

† One no-bid contract, entered into in June 2003, included a no-bid justification separately approved by the Department of General Services. However, later amendments to the contract used the no-bid exemption.

‡ Statutorily exempt from competitive bidding.

The justification the office provided for this exemption was the urgent need to meet the deadlines set forth in HAVA. However, most of the contracts entered into under the no-bid exemption were for services that did not relate to any specific HAVA deadline.

As shown in Table 5, the office used the no-bid exemption to hire consultants to perform voter outreach and registration, implement media campaigns, handle public relations, and monitor poll workers.

Most of the activities performed by these consultants were for regularly scheduled elections occurring in March and November 2004.

The office could not provide us with documentation, such as a plan showing what activities these consultants were to complete by March 2004 or by any other specified deadline. The office also did not establish any way to determine whether its consultants' efforts were successful.

TABLE 5

**Contracts Entered Into Under the Office of the
Secretary of State's No-Bid Exemption**

Description of Activities	Number of Contracts	Total Amount
Voter outreach, March and November 2004 elections	35	\$ 854,082
Media campaign, March 2004 election	5	500,000
Public relations	4	169,170
Poll worker monitoring, March and November 2004 elections	2	22,500
Totals	46	\$1,545,752

Source: The Office of the Secretary of State's list of HAVA contracts.

The office used the exemption to contract for activities relating to the November 2004 election and beyond. Of the 46 contracts executed under the exemption, 27 (59 percent) had start dates occurring after the March 2004 election, with most ending in November or December 2004.

The Office Did Not Follow General Services' Policies in Its Use of CMAS Contracts

The office also did not follow General Services' policies in making California Multiple Award Schedule procurements, and did not follow state procurement policy regarding commodity purchases.

The office appears to have split purchase orders to avoid CMAS procurement limits and competitive bidding requirements.

In June 2004, the office used CMAS to procure \$90,000 in IT consultant services and in the next month used CMAS three more times to procure IT consulting services from the same vendor for the same project. The three subsequent CMAS purchase orders—for \$459,000, \$55,000, and \$27,000, respectively, along with the original \$90,000 purchase order totaled \$631,000.

The office also bypassed CMAS order limits by using multiple purchase orders to procure \$1,145,000 in IT consulting services from another vendor for its voting systems advisory project. The consulting services were to inventory, test, provide security support, and monitor related electronic voting systems.

Despite its policy to follow the same practices General Services requires of other state agencies, the office did not obtain competitive quotes for 10 of 12 HAVA-expensed CMAS purchase orders.

Two examples of these purchase orders included one for \$413,000 in consulting services for a voting systems project, and another for \$56,000 in translation services.

The Office Did Not Follow State Procurement Policy in Its Purchase of Commodities Paid for With HAVA Funds

According to state procurement policy, for all commodity purchases over \$5,000, state agencies are required to obtain at least two informal bids.

Of the three commodity purchases we tested, the office purchased more than \$9,200 in poll worker brochures in January 2004 from one vendor and spent more than \$13,800 for “My Vote Counts” T-shirts, pens, and buttons in February 2004 from another vendor, but did not seek bids before making those purchases.

The Office Spent HAVA Funds on Activities for Which It Had No Spending Authority

The office bypassed the Legislature’s approval authority by inappropriately executing contracts and charging non-administrative expenditures to its fiscal year 2004–05 HAVA administrative expenditures account.

Between July 1, 2004, and September 7, 2004, the office entered into 18 consultant contracts totaling \$230,400 and later paid consultants \$84,600 through these contracts for voter outreach activities.

Until early September 2004, the office had not received any authority from Finance and the Legislature to spend HAVA funds to pay for activities taking place in fiscal year 2004–05, except for the administrative costs relating to HAVA.

Although it had not received spending authority for such activities, the office paid \$84,600 to voter outreach consultants in fiscal year 2004–05 by inappropriately charging these activities to its HAVA administration account.

This approach was inconsistent with the office’s past practice for paying for such activities. It was only after failing to receive spending authority for voter outreach activities that the office began charging these activities to the administration account.

On September 24, 2004, the office sent out a letter giving 30-day termination notice to all of its voter outreach contract consultants. However, because it entered into contracts and allowed consultants to start work on activities for which it had not yet received spending authority, the office put itself in a position of having to decide whether not to pay consultants for services rendered in good faith or pay the consultants by bypassing the Legislature’s authority over spending.

THE OFFICE UNNECESSARILY DELAYED GRANT PAYMENTS TO COUNTIES

The office failed to disburse HAVA funds for replacing voting machines within time frames outlined in its grant application package, internal procedures, and contracts with counties, causing some to lose interest income they could have used to replace their voting equipment.

Of the \$57.3 million allocated, the office disbursed \$34.4 million (60 percent) to qualifying counties as of June 30, 2004.

In a September 2003 application packet, the office notified counties of their allocated amounts, invited them to apply for these grant funds, and said that payment would occur approximately 30 days after a county received written confirmation from the office that its application had been approved and a contract had been executed.

Despite this language, the office disbursed these funds an average of 168 days after receiving the application, causing one county to submit a claim for lost interest income.

The executive office took an average of 56 days to approve applications, even though staff had already thoroughly examined and approved them. The timeline in the accounting procedures indicates that it would take five business days to obtain this executive approval.

In addition, the office directed the State Controller’s Office to send the county checks to its Sacramento headquarters rather than to the counties directly. The office then took an average of 45 days to disburse the checks to the counties.

Some checks were held for a period of time because concerns had arisen that the voting systems purchased by some counties would not comply with HAVA’s accessibility requirements.

Other checks were held because of a controversy surrounding the direct-recording electronic voting systems purchased by some counties. However, it should be noted that the office took more than 120 days to pay two counties that were not involved in any voting system controversy.

Further, the assurances of HAVA compliance provided by the counties were included in their original application packets and were not obtained after the controversies over the voting systems arose. Therefore, it was not necessary to obtain additional assurance from the counties and should not have added any delay in disbursing funds.

Because of delays in disbursement, Los Angeles County requested payment of approximately \$27,000 in interest that it asserted it could have earned had the office made timely payment on the contract. ■

RECOMMENDATIONS

To ensure that it successfully implements the requirements called for in HAVA, the office should take the following steps:

- Develop a comprehensive implementation plan that includes all HAVA projects and activities.
- Designate the individuals responsible for coordinating and assuring the overall implementation of the plan.
- Identify and dedicate the resources necessary to carry out the plan and assign roles and responsibilities accordingly.
- Establish timelines and key milestones and monitor to ensure that planned HAVA activities and projects are completed when scheduled and meet expectations.

To establish or strengthen controls, comply with federal and state laws, and reduce the risk that HAVA funds are spent inappropriately, the office should take the following actions:

- Develop clear job descriptions for employees working on HAVA activities that include expectations regarding conflicts of interest, incompatible activities, and any other requirements important in administering federal funds.
- Establish and enforce a policy prohibiting partisan activities by employees and consultants hired by the office that includes an annual certification that employees have read and will abide by the policy.
- Standardize the language used in all consultant contracts to include provisions regarding conflicts of interest and incompatible activities, such as partisan activities.
- Ensure that time charged to federal programs is supported with appropriate time sheets and certifications.
- When competition is not used to award contracts, establish a process to screen and hire consultants.
- Follow control procedures for the review and approval of contracts to ensure that contracts include a detailed description of the scope of work, specific services and work products, and performance measures.
- Require that contract managers monitor for the completion of contract services and work products prior to approving invoices for payment.

- Review invoices to assure that charges to be paid with HAVA funds are reasonable and allowable and conform to the terms of the contract.
- Follow competitive bidding requirements to award contracts and restrict the use of exemptions to those occasions that truly justify the need for them.
- Follow General Services' policies when using CMAS for contracting needs.
- Comply with state policy for procuring commodities.
- Prohibit fiscal year 2004–05 expenditures for non-administrative HAVA activities until it receives spending approval authority from the Department of Finance and the Legislature.
- Disburse federal HAVA funds to counties for voting machine replacement within the time frames set out in its grant application, procedures, and contracts. ■